

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:15-cv-01743-MMD-NJK

Plaintiff,

ORDER

v.

400 ACRES OF LAND, more or less,
situated in Lincoln County, State of Nevada;
and JESSIE J. COX, *et al.*,

Defendants.

I. SUMMARY

In this eminent domain action, the Court has found that the United States' taking of property ("the Property")¹ for the purpose of operating the Nevada Test and Training Range ("NTTR"), a military test and training facility at Nellis Air Force Base, is for a congressionally authorized public use. (ECF No. 111 at 1.) This leaves the amount of just compensation based on the Property's highest and best use as the sole remaining issue. The Court appointed a land commission (the "Commission") (ECF No. 501)² under Fed. R. Civ. P. 71.1(h)(2) to determine the amount of just compensation primarily because the Property is unique—at the time of the taking, it was the only piece of private property with

¹The Property consists of approximately 400 acres of mining claims in Lincoln County, Nevada. (ECF No. 656 at 3.) It more specifically consists of "six patented mining claims totaling 87.49 acres and 15 unpatented mining claims totaling approximately 309.9 gross acres[.]" (*Id.*) The parties' experts' valuation of the Property was based on the acreage of the patented mining claims, as a patented mining claim is equivalent to fee simple ownership. (*Id.*; see also ECF Nos. 653 at 76, 654 at 89, 659 at 12.)

²The Commission consisted of a retired Nevada Supreme Court Justice, the Honorable Michael L. Douglas, a retired United States District Judge for the District of Nevada, the Honorable Philip M. Pro, and a retired United States Magistrate Judge for the District of Nevada, the Honorable Peggy A. Leen. (ECF Nos. 515, 522, 656 at 43.)

1 an unobstructed view of the NTTR, which is known in popular culture as Area 51, and it
2 contains buildings and other indicia of mining activity dating back to the 1850s. After a site
3 visit to the Property,³ and a bench trial before the Commission, the Commission issued a
4 report concluding that just compensation for the Property is \$1.1 million.⁴ (ECF No. 556
5 (the “Report”).) Before the Court are objections both parties filed to the Report. (ECF Nos.
6 659, 660.) Plaintiff the United States urges the Court to largely adopt the Report, but
7 reduce the amount of just compensation. (ECF No. 659.) Defendants, landowners with
8 interests in the Property (the “Landowners”), asserted numerous objections to the Report.
9 (ECF No. 660.) As further explained below, the Court will overrule all objections, and adopt
10 the Commission’s Report in full because the Court agrees with the Commission’s well-
11 reasoned and well-supported Report.

12 **II. BACKGROUND**

13 The Court again incorporates by reference the background facts set forth in one of
14 the Court’s prior orders on the parties’ motions involving evidentiary issues (ECF No. 497
15 at 2-3), and the Commission’s findings of facts (ECF No. 656 at 9-15). The Court further
16 incorporates by reference the stipulated facts included in the Report to provide further
17 background for this case. (*Id.* at 5-8.)

18 **III. DISCUSSION**

19 The Court will first briefly explain why it has decided to adopt the Report, address
20 Plaintiff’s objection, and then address Landowners’ objections.⁵ A copy of the Report is
21 attached to this order as Appendix A.

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24 ³The Court also attended the site visit. (ECF No. 605.) The Court gave the
25 Commission instructions at seven sites pursuant to the parties’ stipulation. (*Id.*)

26 ⁴Not including mineral rights, which are subject to a separate agreement between
the parties. (ECF Nos. 596, 598.)

27 ⁵The Court’s review is *de novo*. See Fed. R. Civ. P. 71.1(h)(2)(D); Fed. R. Civ. P.
28 53(f).

1 **A. The Report**

2 At a high level, the valuation question the Commission answered in the Report
3 required the Commission to weigh the credibility of Landowners' primary expert Tio
4 DiFederico against the credibility of Plaintiff's primary expert Warren Neville. As reflected
5 in the Report, the Commission found DiFederico not credible, and Neville credible. The
6 Court agrees with this core finding. As extensively detailed in the Report, DiFederico's
7 opinions and corresponding report were speculative and not grounded in credible
8 evidence. In contrast, Neville's opinions and corresponding report were reasonable and
9 grounded in pertinent data.

10 After rejecting Landowners' proffered large-scale tourism use based primarily on
11 DiFederico's testimony as speculative (ECF No. 656 at 15-39), the Commission explained
12 that Plaintiff's proffered rural recreational use based primarily on Neville's credible
13 testimony aligned with Landowners' existing use of the Property, complied with applicable
14 professional standards, and was otherwise reasonable (*id.* at 39-41). However, the
15 Commission found Neville insufficiently weighed the uniqueness of the Property in his
16 valuation, and thus valued the Property based on a higher price per acre than Neville did.
17 (*Id.* at 41-43.)

18 As further explained below while addressing the parties' objections, the Court
19 agrees with the Report, and will adopt it in full. The Report is well-reasoned, clear, and
20 well-supported by citations to the record evidence in this case. DiFederico's outlandish
21 valuation was insufficiently supported by any relevant and credible evidence. In contrast,
22 and like the Commission, the Court finds Neville's approach reasonable and well-
23 supported by relevant evidence. But the Court also agrees with the Commission that
24 Neville somewhat undervalued the Property because he insufficiently accounted for its
25 uniqueness.

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B. Plaintiff's Objection (ECF No. 659)

Plaintiff largely urges the Court to adopt the Report in full, with one exception. Plaintiff argues the Commission applied an additional 25% premium per acre above the highest-priced comparable sale used by Plaintiff's expert Neville without any evidentiary basis for doing so. (ECF No. 659 at 8-12.) Plaintiff therefore asks the Court to revise down the Commission's just compensation finding for the Property to \$874,900, plus another \$104,000 for the mineral estate, for a total of \$978,900. (*Id.* at 3 n.4, 12.)

But notably, Plaintiff does not challenge "the Commission's finding that the Groom Mine is unique because it was a former family mining property and because it offers a view" of Area 51. (*Id.* at 10-11.) Plaintiff only objects to how the Commission quantified that uniqueness by applying the 25% premium. (*Id.* at 11.) The Court therefore adopts without objection the Commission's finding that the Property is unique. In addition, however, the Court agrees with the premium the Commission applied to Neville's most expensive comparable property to arrive at its valuation for the Property.

To start, the Commission had ample evidence to find the Property unique, that Neville failed to sufficiently weight the Property's uniqueness, and to then apply a premium to the Property's valuation. (ECF No. 656 at 11-12 (finding the evidence established substantial interest in Area 51, and the Property had an exclusive view of Area 51); see also *id.* at 41 (finding "Neville failed to give sufficient consideration to the unique one-of-a-kind nature of the Groom Mine.")) Further, the site visit convinced the Court of the uniqueness of the Property. (ECF No. 600 ("Joint Instructions") at 12 (instructing the Commission that, in determining fair market value, they may consider, "not only the opinions of the various witnesses who testified as to the market value, but also all other evidence in the case that may aid in determining market value[,] which the Court interprets as permitting the Court to consider its experience and observation at the site visit).) The old buildings and other indicia of historical mining activity were interesting. The desert landscape and views from the Property were beautiful. And more importantly, the view of

1 the remote operating base known in popular culture as Area 51 was quite clear.
2 Considering the clarity of the view in conjunction with the Court's knowledge of that view's
3 exclusivity, and its awareness of the Area 51 phenomena in popular culture, the Court
4 found the Property special. It had an inexplicable quality to it, its aura no doubt influenced
5 by the question of whether other life forms exist in the universe. The Court therefore
6 agrees with the Commission the Property would command some sort of premium over the
7 most expensive comparable sale selected by Neville—a nicer, but not as unique, property.

8 Turning to the amount of the premium, while it is difficult to say exactly why it should
9 be 25%, the Court also cannot say that this premium is arbitrary or unreasonable, or that
10 some other premium is more logical than 25%. Regardless, after reviewing the Report,
11 the parties' briefs, and the evidence before the Commission, the Court has not been able
12 to devise a more rational premium. The Court therefore agrees with the Commission that
13 25% per acre was an appropriate premium to apply in this case. The Court's agreement
14 with the Commission is informed by both the substantial evidence offered by Landowners
15 of the uniqueness and exclusivity of the Property at the time of the taking, along with
16 general interest in Area 51.

17 As to Plaintiff's objection, the Court does not disagree that it could have excised
18 the 25% premium because the Court's review is *de novo*. (ECF No. 659 at 12 (relying on
19 caselaw).) But, for the reasons provided above, the Court chooses not to. Further, Joint
20 Instruction 15 does not compel a different result because "determination of the market
21 value of an estate or interest in land, at a given date, is necessarily based upon
22 assumption rather than fact." (ECF No. 600 at 19; see *also* ECF No. 659 at 11 (arguing
23 this instruction weighs against adopting the Commission's 25% per acre premium).)
24 Neither does Joint Instruction 5, because the "report need not include detailed findings on
25 all contested issues, but it must show the pathway that you took through the maze of
26 conflicting evidence[.]" and the Court finds that paragraph 166 of the Report does this
27 when read in light of the whole Report. (ECF Nos. 600 at 7 (Joint Instruction 5), 656 at 43
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(including paragraph 166), 659 at 11 (arguing this instruction weighs against adopting the Commission's 25% per acre premium).)

In sum, the Court overrules Plaintiff's objection. (ECF No. 659 at 8-12.)

C. Landowners' Objections

Depending on how you count them, Landowners raised approximately 24 objections to the Report. (ECF No. 660.) Landowners insist they are entitled to \$49,870,000.00 for the Property. (*Id.* at 76.) Landowners' objections may be organized into five groups.⁶ The Court addresses each of the five groups of objections, in turn, below.

1. The Level of Detail in the Commission's Highest and Best Use Analysis (Objection V.(1)(A))

Landowners contend that the Commission did not perform a sufficiently detailed analysis of all four highest and best use prongs (physically possible, legally permissible, financially feasible, and maximally productive), which led to error when they rejected Landowners' proposed tourism use as speculative. (ECF No. 660 at 18-19.) The Court disagrees.

To start, Landowners primarily rely on *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1181 (9th Cir. 2000) to support this objection.⁷ (ECF No. 660 at 18-19.) However, *Desert Citizens* was not—like this case—a condemnation case. Indeed, the *Desert Citizens* court specifically distinguished another case because it was a condemnation case. See 231 F.3d at 1183. Moreover, to the extent *Desert Citizens* is even applicable, Landowners specifically cite to page 1181 (ECF No. 660 at 18-19), which contains the following qualification: "While uses that are merely speculative or conjectural

⁶The Court also refers to Landowners' objections using the section headings Landowners assigned to them. (See *generally* ECF No. 660.)

⁷The Court discussed *Desert Citizens* in a prior order after Landowners relied on it, and did not raise this issue of its applicability, instead assuming it applied. (ECF No. 497 at 5-6, 27-28.)

1 need not be considered, uses that are “reasonably probable” must be analyzed as a
2 necessary part of the highest and best use determination.” *Id.* at 1181.

3 That qualification renders Landowners’ objection unpersuasive because the
4 Commission specifically rejected Landowners’ valuation of the Property as too
5 speculative. (ECF No. 556 at 15-39; see also *id.* at 16 (“[T]he issue is not whether any
6 commercial tourism use was reasonably probable at the Date of Value (i.e., physically
7 possible, legally permissible, financially feasible, and maximally productive). The issue is
8 whether Landowners have supported their proposed large-scale tourism use involving
9 bringing 91,250 people to the Groom Mine, paying \$450 each, year after year.”).) Thus,
10 even considering *Desert Citizens*, the Commission was not required to complete the
11 highest and best use analysis for Landowners’ proffered large-scale tourism use because
12 the Commission determined—over the course of many pages of analysis—it was too
13 speculative. (*Id.* at 15-39.) See also *Desert Citizens*, 231 F.3d at 1181.

14 Moreover, the Commission conducted more highest and best use analysis than
15 Landowners give them credit for. For example, Landowners argue “there is no analysis on
16 the physical possibility element” in the Report. (ECF No. 660 at 19.) But the Commission
17 concluded that even Landowners’ speculative, proposed use was physically possible.
18 (ECF No. 556 at 8.) Thus, Landowners’ representation in their objection is both inaccurate,
19 and odd, because the Commission concluded that particular prong of the analysis actually
20 favored Landowners’ position. Additionally, the Commission provided extensive findings
21 as to why it did not find Landowners’ proposed large-scale tourism use legally permissible.
22 (*Id.* at 29-33.) The Commission also did not find Landowners’ proposed use financially
23 feasible. (*Id.* at 16-33.) Finally, the Commission found that using the Property as a rural,
24 recreational retreat was its maximally productive use. (*Id.* at 41.) Thus, Landowners’
25 argument that the Commission did not conduct a highest and best use analysis is
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unpersuasive—because it is unsupported in view of the actual content of the Report.⁸ The Court therefore overrules Landowners’ objection V.(1)(A). (ECF No. 660 at 18-19.)

2. The Commission’s Application of Governing Legal Standards (Objections V.(1)(B), V.(1)(C)(3), V.(1)(C)(6), V.(1)(D), V.(2)(A))

A number of Landowners’ objections generally argue the Commission either did not apply the correct legal standard as provided to them in the Joint Instructions (ECF No. 600), or incorrectly applied those instructions. And while the Court will discuss some of Landowners’ more specific objections below, the Court generally finds Landowners’ arguments unsupported in view of the content of the Report, and the very Joint Instructions Landowners rely on to make their arguments.

To start, Landowners appear to confuse ‘proof’ and ‘evidence.’ Landowners argue the Commission erred in determining that their existing use of the Property—as a rural, recreational retreat—was the highest and best use of the Property. (ECF No. 660 at 20-23.) Landowners rely on both a Joint Instruction and caselaw providing that “the existing use of property at the date of value in an eminent domain action is only presumed to be the highest and best use in the ‘absence of proof to the contrary.’” (*Id.* at 20 (citation omitted).) They then go on to argue that the Commission erred because it assigned little weight to the evidence Landowners presented as to their proposed large-scale commercial tourism use as speculative, repeatedly emphasizing the ‘absence of proof to the contrary’ language. (*Id.* at 20-23.) Landowners even go so far as to state, “[h]ere, it is uncontroverted that there was significant proof of a higher and better use, other than the existing use made of the Property[.]” (*Id.* at 21.) Later on the same page, Landowners characterize their ‘proof’ as ‘evidence.’ (*Id.*)

⁸Indeed, Landowners appear to argue the Commission’s analysis in its Report is flawed because the Commission did not adopt Landowners’ proposed analysis. (ECF No. 660 at 19 (stating that they “provided the appropriate analysis for each of these individual elements” and criticizing the Commission for not following that analysis).) But declining to rule in Landowners’ favor is not necessarily error. The Commission’s job was to decide the appropriate valuation for the Property in light of competing proposals from both sides. The Commission was obviously not required to adopt Landowners’ positions.

1 This argument is unpersuasive. It is plainly controverted as to whether there is
2 significant proof of a higher and better use of the Property than a rural, recreational use.
3 That was one of the key issues presented at the bench trial before the Commission, and
4 Plaintiff extensively argued in its proposed findings of fact and conclusions of law that
5 Landowners' evidence as to their proposed large-scale tourism use was too speculative.
6 (ECF No. 653 at 16-72.) Thus, it is not—and cannot be—uncontroverted. Moreover, there
7 is no question Landowners presented evidence at the bench trial. But the Commission
8 spent many pages of its Report explaining why it found Landowners' evidence
9 unpersuasive. (ECF No. 656 at 15-39.) Thus, Landowners' evidence never became proof.
10 And the Court declines to deem it proof in this order because, as explained above, the
11 Court agrees with the Commission that Landowners' evidence as to their proposed large-
12 scale commercial tourism use was too speculative to establish it is the Property's highest
13 and best use.

14 Further, the Court finds the Commission faithfully applied Joint Instruction 13. (ECF
15 No. 600 at 16 ("However, in absence of proof to the contrary, the current use is presumed
16 to be the best use.")) Because the Commission rejected Landowners' evidence as to their
17 proposed large scale tourism use as too speculative, the Commission did not err in
18 determining that Landowners' use as of the time of the taking was the highest and best
19 use. Relatedly, Landowners also object to the Commission's use of the word 'presumption'
20 (ECF No. 660 at 21-23), but the Court finds the Commission's use of the word presumption
21 is nothing more than an accurate rephrasing of Joint Instruction 13 (ECF No. 556 at 5).
22 The Court therefore overrules Landowners' objection V.(1)(B) (ECF No. 660 at 20-23).

23 Landowners raise a few other, similar objections. For example, they repeatedly
24 argue the Commission applied an improper "exact and actual" evidentiary standard to
25 evidence presented by Landowners through their expert DiFederico. (ECF No. 660 at 37
26 (Objection V.(1)(D)), 660 at 53-58 (Objection V.(1)(D)(3)(a)), 67 (Objection V.(1)(D)(4)).)
27 But the Commission does not use this phrase anywhere in the Report. And when the Court
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1 carefully reviewed the Report (again) after reviewing these objections, the Court finds the
2 Commission applied the correct evidentiary standard. (*Compare, e.g.*, ECF No. 660 at 37
3 (arguing the Commission applied the ‘exact and actual’ standard in ECF No. 656 at 15-
4 16) *with* ECF No. 656 at 15-16 (stating that Landowners’ expert DiFederico’s proposed
5 “tourism operation involving 250 daily customers, coming on the Groom Mine 365 days
6 per year, with each visitor paying an entrance fee of \$400 and an additional \$50 for
7 knickknacks” was unsupported by any market evidence).)

8 At a high level, Landowners appear to suggest in making their ‘exact and actual’
9 argument that the Commission should have found in their favor because the burdens they
10 are subject to (i.e. preponderance of the evidence) are not particularly high. (ECF No. 660
11 at 53-56 (attacking the Commission’s finding that DiFederico’s proposed \$400 admission
12 charge was unreasonable because he talked to 11 booking agents, one of them told him
13 \$300 would be reasonable, and he did not say what the other agents told him; and
14 attacking the Commission’s finding that the fact 2,000 people annually pay \$200 dollars
15 to go on an existing Area 51 photo tour does not establish that 91,250 people annually will
16 pay \$400 to go to the Property).) But while it may be true the preponderance of the
17 evidence standard is not particularly high, the Commission found Landowners did not carry
18 that burden—and the Court agrees with the Commission. (ECF No. 656 at 17 (“The
19 Commission finds Landowners have not met their burden of establishing by a
20 preponderance of the evidence that there was market demand or the prospect of market
21 demand for Landowner’s proposed large-scale tourist commercial use in the reasonably
22 foreseeable future for the reasons explained below.”), 25-28 (finding DiFederico’s
23 proposed \$400 fee was inadequately supported).) Thus, Landowners’ argument is
24 unconvincing, in part because DiFederico’s report and testimony lack persuasive force.
25 As explained throughout this order, DiFederico’s report and testimony do not establish
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1 much of anything, even under a preponderance standard.⁹ The Court therefore overrules
 2 Landowners' objections V.(1)(D), V.(1)(D)(3)(a), and V.(1)(D)(4). (ECF No. 660 at 37, 53-
 3 58, 67.)

4 Landowners' final objection in this vein is that the Commission erred in their
 5 analysis of DiFederico's proposed comparable sales because the Commission insisted on
 6 properties similar to the Property, which created an impossibly high burden for the
 7 Landowners to meet because the Property is unique. (ECF No. 660 at 67-68 (objections
 8 V.(2), V.(2)(A)).) This objection is unpersuasive both because it mischaracterizes the
 9 Commission's pertinent findings, and DiFederico's proposed comparable sales are so
 10 remarkably unlike the Property. To start, the Commission did not deviate from the pertinent
 11 instructions in stating how comparable the sales had to be. (ECF No. 656 at 33 (relying
 12 on Commission Instruction No 14).) Moreover, the Commission merely determined
 13 DiFederico's proposed comparable sales were insufficiently similar to the Property. (*Id.* at
 14 656 at 33-39; *see also id.* at 33 ("Mr. DiFederico misapplied the sales comparison
 15 approach by selecting sales from a drastically different market, by adjusting those sales
 16 inconsistently, and by failing to support those adjustments with any market evidence.").)
 17 Thus, Landowners' objection is generally unpersuasive.

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 20 ⁹As just one example, DiFederico estimated that every tourist who came on his
 21 proposed \$400 tour to the Property would spend \$50 on food and souvenirs in part
 22 because he spends a lot on money on churros when he takes his family to Disneyland.
 23 (ECF No. 656 at 28-29.) But how would a tourist spend any money on food and souvenirs
 24 considering that Landowners' proposal included no capital improvements? (ECF No. 660
 25 at 7.) The Court assumes some capital improvement would be necessary to build a
 26 souvenir stand or cafe on the Property, unless Landowners contemplated selling the
 27 tourists souvenirs and offering them food in the vehicle used to transport them to and from
 28 the Property—though Landowners never argued this. (ECF No. 654 at 64.) DiFederico
 also supported this \$50 figure by pointing to sales at the Alien Research Center, but those
 sales only averaged \$26.75 once the Alien Research Center's owner excluded everyone
 who did not buy anything. (ECF No. 656 at 28.) And as the Commission also pointed out,
 DiFederico's analysis assumed sustained demand (250 people a day spending \$50 on
 knickknacks forever) without providing any evidence for such sustained demand. (*Id.* at
 29.) Thus, DiFederico's food and souvenir spending assumption is incredible in the literal
 sense of the word—impossible to believe. It is also representative of many of DiFederico's
 other assumptions in his report and testimony.

Landowners' argument in these objections also glosses over the dissimilarity between the Property and DiFederico's five selected comparable sales. His five selected comparable sales are all in the Las Vegas metropolitan area—one of them right off the Las Vegas strip and next to the MGM Grand Hotel. (ECF No. 656 at 34-39.) In contrast, the Property is about 2.5 driving hours from Las Vegas, an hour from the nearest medical facility, and down a long dirt road inside a secret military base. (*Id.* at 5-15.) Moreover, the Property lacks power, water rights, internet, or a sanitation system capable of handling more than a few people at a time. (*Id.*) It presents obviously different development challenges than the sales DiFederico selected as comparable. And as the Commission pointed out, even DiFederico conceded the properties he selected were not really comparable. (*Id.* at 34.) In sum, for the reasons provided by the Commission (*id.* at 34-39), the Court is convinced DiFederico's selected comparable sales are simply not comparable.¹⁰ The Court therefore overrules objections V.(2) and V.(2)(A). (ECF No. 660 at 67-73.)

More generally, the Court overrules all of Landowners' objections that the Commission either did not apply the correct legal standard as provided to them in the Joint Instructions (ECF No. 600), or incorrectly applied those instructions in its Report.

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¹⁰Two subsidiary points. First, Landowners' argument the Court should consider other valuation approaches beyond comparable sales is irrelevant at this point in the litigation because the Court considered and rejected basically the same argument when it excluded Landowners' attempt to rely on the income approach, in part because the Property had not generated any income since mining operations stopped in the 1950s. (ECF No. 660 at 68 (acknowledging the Court excluded in the income approach at ECF No. 497 at 14:3-4).) Second, Landowners' argument they could not do better than the comparable properties proffered by DiFederico because the Property is unique is unconvincing. (ECF No. 660 at 68-73.) While the Court need not speculate, perhaps a vacant property within a piece of federal land with views into Bryce Canyon or the Grand Canyon (tourist attractions Landowners proffered as comparable) would have been a better comparable sale, assuming such a sale existed? Regardless, the comparable sales DiFederico selected are too dissimilar to the Property.

1 **3. Challenges to Particular Factual Findings (Objections**
2 **V.(1)(D)(3)(b)-(f))**

3 Landowners also object to specific factual findings the Commission included in the
4 Report. (ECF No. 660 at 58-67.) The Court will briefly address—and overrule—those
5 objections.

6 Landowners first challenge the Commission’s conclusion that the Las Vegas
7 Convention and Visitors Authority (“LVCVA”) survey data that DiFederico relied on does
8 not establish demand for Landowners’ proposed large-scale tourism use of the Property.
9 (ECF No. 660 at 58-61 (Objection V.(1)(D)(3)(b)).) However, the Court agrees with the
10 Commission’s finding in the Report. (ECF No. 656 at 22.) Landowners more specifically
11 argue the Commission should have credited the testimony of their experts—who relied on
12 the LVCVA—rather than Plaintiff’s experts, whose testimony the Commission relied on to
13 support their findings, because Landowners’ experts are more familiar with Southern
14 Nevada. (ECF No. 660 at 58-60.) However, the Commission did not rely on the testimony
15 of Plaintiff’s experts for anything specific to Nevada. (ECF No. 656 at 22.) Instead, the
16 Commission relied on that testimony to buttress the Commission’s findings that: (1)
17 surveys about an entire metropolitan area do not establish demand for a particular project;
18 (2) nothing in the LVCVA survey attempts to quantify demand for alien-themed tourism;
19 and (3) Landowners’ expert DiFederico did not sufficiently consider how price impacts
20 demand. (*Id.*) The Court is unable to see how local knowledge would change these
21 findings. In addition, Landowners challenge the Commission’s finding that DiFederico’s
22 estimate of annual visitor traffic to the Property is merely *ipse dixit*. (ECF No. 660 at 60-
23 61.) But Landowners rely on the portion of the trial transcript immediately preceding the
24 portion the Commission did to support their argument. (*Compare id.* (relying in part on
25 ECF No. 633 at 24-25) *with* ECF No. 556 at 21-22 (relying in part on ECF No. 633 at 27-
26 42).) The Court agrees with the Commission’s view of this testimony, not Landowners’.
27 While of course DiFederico’s calculation of demand for Landowners’ proposed large-scale
28 tourism use will necessarily be subjective on some level, DiFederico pulled his demand

1 estimate out of thin air. (See, e.g., ECF No. 633 at 38 (“I’m not a huge Laughlin fan
2 maybe.”).) The Commission was not required to accept DiFederico’s demand estimate.
3 The Court will thus overrule objection V.(1)(D)(3)(b). (ECF No. 660 at 58-61.)

4 Landowners next challenge the Commissions’ finding that interest in Area 51
5 peaked in the mid-1990s. (ECF No. 660 at 61-62 (Objection V.(1)(D)(3)(c).) The Court
6 overrules this objection as immaterial to the Commission’s Report. In considering the
7 Report as a whole, the Commission did not reject Landowners’ proposed large-scale
8 tourism use because interest in Area 51 peaked before the date of the taking, but because
9 it was speculative and unsupported. Moreover, the Commission otherwise found that
10 Landowners carried their burden to show there was substantial interest in Area 51 as of
11 the date of taking. (ECF No. 556 at 11-12 (noting in addition that Plaintiff conceded people
12 are interested in Area 51).) Thus, the Commission’s finding that interest in Area 51 peaked
13 in the mid-1990s did not prevent them from finding in Landowners’ favor that people are
14 interested in Area 51. The Court will therefore overrule objection V.(1)(D)(3)(c) as
15 immaterial. (ECF No. 660 at 61-62.)

16 Landowners then challenge the Commission’s finding that the ‘Storm Area 51’
17 event was ‘not cancelled’ and was a ‘financial failure.’ (*Id.* at 63-65 (Objection
18 V.(1)(D)(3)(d).) The Court overrules this objection because the Commission rejected the
19 precise argument Landowners raise in their objection (ECF No. 656 at 20 n.6), and the
20 Court agrees with the Commission for the reasons stated in that footnote.

21 Landowners further challenge the Commission’s finding that Landowners did not
22 carry their burden to establish year-over-year demand for their proposed large-scale
23 tourism use by arguing that other alien-themed business in the area have been in business
24 for a while, other tourist attractions such as Grand Canyon West and Death Valley have
25 year-over-year demand, and over 3 million people signed up to ‘Storm Area 51’ on
26 Facebook in the summer of 2019. (ECF No. 660 at 65-66 (Objection V.(1)(D)(3)(e)).)
27 However, the other alien-themed businesses in the area and tourist attractions like Death
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1 Valley do not owe much of their value to exclusivity. DiFederico's assumption that over
2 90,000 tourists a year will visit the Property forever depends on its exclusive view of Area
3 51—which necessarily becomes less exclusive over time, as more people visit. Thus,
4 those businesses and attractions do not demonstrate the Commission erred. As to
5 Landowners' argument that the 'Storm Area 51' Facebook event evidences sustained
6 demand for their proposed large-scale tourism use, it is obvious that signing up for an
7 event on Facebook does not mean someone will pay \$400 for 6.5 hour car ride into the
8 desert and back. Said more simply, the Court is unconvinced by Landowners' arguments
9 and will therefore overrule objection V.(1)(D)(3)(e). (ECF No. 660 at 65-66.)

10 Landowners finally challenge the Commission's finding in paragraph 111 of their
11 report that Landowners' proposed large-scale tourism use might not be financially feasible
12 if it could not attract 91,250 annual visitors, and those visitors paid less than \$400 per
13 person. (ECF No. 660 at 66-67 (Objection V.(1)(D)(3)(f)).) The Court overrules this
14 objection as immaterial because the Commission's meaningful conclusion in that
15 paragraph was that "Landowners put on no evidence about the financial feasibility of a
16 tourism operation having less than 91,250 annual visitors." (ECF No. 656 at 27.) That
17 finding supported the Commission's broader conclusion that Landowners had not carried
18 their preponderance of the evidence burden to establish that a large-scale commercial
19 tourism use was reasonably probable. (*Id.* at 15-16.) Moreover, the Commission correctly
20 made clear it was not permitted to "attempt to value some 'smaller scale' tourism scenario
21 (e.g., where tourists come to the property one weekend per month) because Landowners
22 did not put forward any sales to value such a 'small scale' commercial tourism use." (*Id.*
23 at 16.) Thus, the particular sentences of the Report Landowners object to had no real
24 bearing on the Commission's findings as to their just compensation award
25 recommendation. Objection V.(1)(D)(3)(f) is overruled. (ECF No. 660 at 66-67.)

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1 **4. The Commission's Alternative Holding that Landowners'**
2 **Proposed Large-Scale Tourism Use Was Not Necessarily**
3 **Legally Permissible (Objection V.(1)(C))**

4 Landowners object to the Commission's finding that, while some type of tourist use
5 of the Property was legally permissible, Landowners' proposed tourism use was not
6 necessarily permissible. (ECF No. 660 at 23-26 (Objection V.(1)(C)).) Though the Court
7 overrules the entire objection, the Court will specifically address its major components.

8 First, the Court views the Commission's pertinent holding as an alternative holding.
9 The Commission first found Landowners' proposed large-scale tourism use too
10 speculative to constitute the Property's highest and best use. (ECF No. 656 at 15-29.) The
11 Commission went on to also find that Landowners had not established their proffered
12 large-scale tourism use was permissible without a special use permit from Lincoln County,
13 and the Air Force could object to their proposed use. (*Id.* at 29-33.) Thus, even if the Court
14 did not agree with the Commission on these two latter points—though it does—it could
15 still adopt the Commission's rejection of Landowners' proposed large-scale tourism use
16 as too speculative.

17 Moving on to Landowners' objections, Landowners primarily rely on Joint
18 Instruction 12—along with representations Air Force officials made at the time of the 1984
19 withdrawal—to argue the Commission's finding that the Air Force could object to
20 Landowners' proposed large-scale tourism use is erroneous because the parties
21 stipulated the Air Force could not cap the number of business visitors Landowners could
22 invite on the Property. (ECF No. 660 at 25-28.) However, this objection is unpersuasive.
23 From the 1984 withdrawal onwards, the Property was an island within the NTTR. (ECF
24 No. 556 at 6.) Both before and after the taking, the Air Force used the NTTR to conduct
25 classified missions. (*Id.* at 7.) Thus, as a matter of common sense, the Air Force might
26 object if Landowners began bringing 250 people on the Property every day for the
27 foreseeable future. That is very different from the occasional long weekends Landowners
28 used the Property for from the 1950s until the date of the taking. (*Id.* at 10-15.) Member of

1 the Lincoln County Planning Commission Lytle also confirmed the Air Force, as an
2 adjacent property owner, could have objected if Landowners began bringing 250 people
3 a day onto the Property. (*Id.* at 32.) Moreover, this view aligns with an important caveat
4 included in Joint Instruction 12 that Landowners' argument ignores: "However, any
5 positive or negative effects of the NTTR (if any) on the Property that were present prior to
6 December 19, 2014, should be considered." (ECF No. 600 at 13-14.) Thus, the
7 Commission was permitted to consider the fact the NTTR encompassed the Property, and
8 the Air Force was therefore able to object if Landowners began bringing 250 people a day
9 to the Property notwithstanding the Air Force's longstanding commitment to allowing
10 Landowners and their guests on to the Property.

11 This dovetails with Landowners' argument the Commission violated the project
12 influence rule in finding the Air Force could object to Landowners' proposed large-scale
13 tourism use. (ECF No. 660 at 28-30.) Landowners rely on caselaw and Joint Instruction 8
14 to make their argument. (*Id.*) As encapsulated in Joint Instruction 8, the project influence
15 rule provides the Commission should not "consider the fact that the United States
16 government has taken, or planned or intended to take, the land" in determining just
17 compensation. (ECF No. 600 at 10.) Landowners argue the Commission violated the
18 project influence rule in finding the Air Force could object to Landowners' proposed large-
19 scale tourism use "as the Government's necessities cannot influence in any way the value
20 of the Property." (ECF No. 660 at 30.)

21 The Court disagrees. Landowners' argument overlooks that the NTTR
22 encompassed the Property before the date of taking. As the operator of the NTTR—and
23 again as supported by Lytle's testimony—the Air Force could have objected if Landowners
24 started bringing 250 people a day onto the Property. The Air Force's ability to object does
25 not come from any contemplation of condemning the Property, but from its existing rights
26 as the adjacent (indeed, surrounding) landowner. The Commission's finding thus did not
27 violate the project influence rule. Said otherwise, the Commission may have violated the
28

1 project influence rule if it valued the Property at \$0 because the Air Force was condemning
2 it—but that is not what the Commission did. Instead, the Commission recognized the
3 reality that the NTTR has encompassed the Property since 1984.

4 Landowners' remaining objections to the Commission's legal permissibility findings
5 relate to the Property's zoning. The Court also overrules these objections. The Property
6 was zoned A-5 at the date of taking, which permits agricultural uses as of right. (ECF No.
7 556 at 9.) Landowners more specifically argue the Commission erred because a rural
8 recreational use—the way Landowners had been using the Property for approximately 60
9 years—was not permitted under the A-5 zoning. (ECF No. 660 at 30-32.) However, Lytle
10 testified that Landowners' existing use of the Property would be permitted because it
11 predated current zoning regulations,¹¹ and was thus permitted under the A-5 zoning. (ECF
12 No. 632 at 17.)

13 Landowners, relying on Lytle's testimony, also argue the Commission erred in
14 determining Landowners would have needed a special-use permit to engage in their
15 proposed large-scale commercial tourism use because a tourism use was permitted as of
16 right. (ECF No. 660 at 32-34.) However, Lytle did not testify Landowners did not need a
17 special-use permit, and other experts on both sides testified that Landowners would need
18 a special use permit. (ECF No. 556 at 29-33.) Moreover, as the Commission pointed out,
19 Lytle also testified that he, as a Lincoln County Planning Commission member, would have
20 entertained any objections from the Air Force if Landowners pursued their large-scale
21 tourism use. (*Id.* at 33.)

22 Landowners finally argue the Commission erred in determining Landowners had
23 not established they could get the special use permit from Lincoln County required for a
24 large-scale tourism use because they got a post-hoc special use permit. (ECF No. 660 at
25

26 ¹¹“Providing such protection commonly is known -- in the case law and otherwise -
27 - as ‘grandfathering.’ We decline to use that term, however, because we acknowledge that
28 it has racist origins.” *Comstock v. Zoning Bd. of Appeals of Gloucester*, Case No. 19-P-
1163, 2020 WL 4432295, at *3 n.11 (Mass. App. Ct. Aug. 3, 2020).

1 34-36.) However, as the Commission found, Landowners did not describe the large-scale
2 tourism use they proffered to the Commission to the Lincoln County Planning Commission
3 when they applied for a post-hoc special use permit, the post-hoc special use permit
4 process they went through was not indicative of what would have happened under normal
5 circumstances because it was not noticed as it would have normally been, and the Air
6 Force did not participate in the process, though it would normally be expected to. (ECF
7 No. 556 at 30-33.)

8 In sum, the Court overrules all of Landowners' objections within objection V.(1)(C)
9 to the Commission's legal permissibility findings. (ECF No. 660 at 23-36.)

10
11 **5. The Commission Should Have Disqualified Plaintiff's Experts
Neville and Weissenborn (Objection V.(2)(B))**

12 Landowners also argue the Court should disqualify Plaintiff's experts Neville and
13 Weissenborn primarily because neither of them has sufficient experience with Southern
14 Nevada. (ECF No. 660 at 73-76; *see also id.* at 73 n.29.) As to both experts, the Court
15 does not find their purported lack of experience with Southern Nevada disqualifying. Both
16 Neville and Weissenborn retained a local appraiser, Chris Matthews, to help them with
17 portions of their reports, in compliance with applicable professional standards, and to fill
18 any gaps in their knowledge stemming from their lack of familiarity with Southern Nevada
19 specifically. (ECF No. 634 at 135-145, 245.) As to Neville, the Commission found his
20 analysis complied with professional standards. (ECF No. 556 at 16-19, 40-41.) Further,
21 the Court already considered and denied a motion Landowners filed to exclude Neville's
22 opinion for similar reasons. (ECF No. 497 at 23-29.) Landowners also overlook that Neville
23 had some particularly relevant appraisal experience: he appraised the Fuchs Nuclear
24 Mine, a patented mining claim within the NTTR, and conducted appraisals of three other
25 mining inholdings within the Lake Mead National Recreation Area. (ECF No. 634 at 163-
26 64.) And even Landowners' expert Harper agreed that Neville's appraisal complied with
27 professional standards. (ECF No. 556 at 40-41.) As to Weissenborn, the Court similarly
28

1 declined to exclude her testimony on particular subjects in a prior order. (ECF No. 497 at
2 14-17, 19-22.) The Court declines to disqualify Plaintiff's experts Neville and Weissenborn.

3 Landowners finally argue the Court should disregard Neville's testimony because
4 he did not conduct a financial feasibility analysis or market demand study for a commercial
5 tourism use in rejecting such a use as the Property's highest and best use, though he
6 concluded such a use was physically possible and legally permissible with conditions.
7 (ECF No. 660 at 74-75.) However, the Commission considered and rejected this same
8 argument in the Report. (ECF No. 556 at 16-29.) The Court agrees with the Commission
9 for the reasons the Commission provided in the Report. (*Id.*) Moreover, Neville correctly
10 testified that he did not need to conduct a financial feasibility analysis because he
11 determined Landowners' proposed tourist commercial use was not reasonably probable.
12 (ECF No. 634 at 213.) In sum, the Court overrules Landowners' objections seeking to
13 exclude the testimony of Plaintiff's experts Neville and Weissenborn. (ECF No. 660 at 73-
14 76 (Objection V.(2)(B).))

15 **IV. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several cases
17 not discussed above. The Court has reviewed these arguments and cases and determines
18 that they do not warrant discussion as they do not affect the outcome of the issues before
19 the Court.

20 It is therefore ordered that the Report of the Commission (ECF No. 656) is accepted
21 and adopted in full.

22 It is further ordered that just compensation for the taking of the Property is
23 \$1,100,000, plus another \$104,000 for the mineral estate (as separately agreed to by the
24 parties), for a total of \$1,204,000. The Clerk of Court is directed to issue a check in an
25 amount corresponding to the funds still held by the Clerk of Court in this case to the Law
26 Offices of Kermitt L. Waters (ECF Nos. 10, 85).

1 It is further ordered that Plaintiff's motion to adopt in part and modify in part the
2 Commission's Report (ECF No. 659) is granted in part, and denied in part, as explained
3 in this order.

4 It is further ordered that Landowners' objections to the Commission's Report (ECF
5 No. 660) are overruled, and their request to modify the Report in part is denied.

6 The Clerk of Court is directed to enter judgment in accordance with this order and
7 close this case.

8 DATED THIS 27th Day of August 2020.

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11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
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Appendix A

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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

8 400 ACRES OF LAND, more or less,
9 situate in Lincoln County, State of Nevada;
10 and JESSIE J. COX, et al.,

11 Defendants.
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Case No. 2:15-cv-01743-MMD-NJK

**COMMISSION'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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1 **I. INTRODUCTION**

2 This is a condemnation action filed by the United States for the taking of approximately
3 400 acres of patented and unpatented mining claims in Lincoln County, Nevada, known as the
4 “Groom Mine.” Commission Instruction No. 1 (ECF No. 600). Chief Judge Du selected a land
5 commission (“Commission”) to determine just compensation for the taking pursuant to Rule
6 71.1(h) of the Federal Rules of Civil Procedure on September 17, 2019. Order (ECF No. 515).

7 The Groom Mine consists of six patented mining claims totaling 87.49 acres and 15
8 unpatented mining claims totaling approximately 309.9 gross acres. *Id.* The Commission has
9 been instructed that the patented mining claims are the equivalent of fee simple ownership, and
10 that the surface of the unpatented mining claims can only be used for mining related activities
11 and to access patented claims. *Id.* The only issue the Commission is to decide is how much the
12 United States should pay for the property it has taken. *Id.* The Commission was explicitly
13 instructed that it may not decide any questions or issues related to the validity of the taking, or
14 the value or contributory value of any mineral interest to the Groom Mine which is outside the
15 scope of the proceedings before the Commission. *Id.*

16 This unanimous report of findings of fact and conclusions of law is issued pursuant to
17 Rule 71.1(h)(2)(D). The Court has instructed that conclusory findings alone are insufficient.
18 Commission Instruction No 5. However, the Commission’s report “need not include detailed
19 findings on all contested issues.” *Id.* Rather, the report must show the pathway the Commission
20 took through the maze of conflicting evidence, which at the very least consists of demonstrating
21 the reasoning used in deciding on the award, the standard of valuation the Commission tried to
22 follow, and the lines of testimony the Commission adopted. *Id.* The Commission was instructed
23 it need not resolve every contested issue of fact or make subsidiary findings of fact but should
24 make specific findings as to the matters on which valuation was based, show how it applied the
25 principles of law in reaching its ultimate conclusion and state the reasons for arriving at its
26 valuation. This includes our finding on the highest and best use of the property. *Id.* The
27 Commission was instructed that just compensation means the fair market value of the property
28 on the date of taking. Commission Instruction No. 8. Although there are generally three

1 recognized approaches to ascertain market value, the parties agreed one was not an available
2 method, and one approach was excluded in this case. Commission Instruction No. 9.
3 Accordingly, the Commission was instructed it must ascertain the fair market value of the
4 property utilizing the comparable sales approach. *Id.*

5 At trial both parties offered expert and other evidence concerning the highest and best
6 use of Groom Mine on the stipulated date of value, September 10, 2015. Both sides presented
7 expert MAI opinion testimony on just compensation for the taking based on the price per acre
8 due to the Landowners for the 87.49 acres comprising the patented mining claims.

9 The United States contended that the highest and best use of the Groom Mine was its
10 existing use at the time of taking as rural residential, and that just compensation for the taking
11 was \$254,000. The United States' appraiser opined that comparable substitute sales of rural
12 recreational property in the area of the Groom Mine sold for between \$1,668 per acre and
13 \$10,000 per acre. He offered testimony on which of his five comparable sales of rural residential
14 property were superior or inferior to the Groom Mine. He testified the Groom Mine would sell
15 for between \$2,303/acre and \$2,953/acre and concluded the market value on the date of value
16 was \$2,900/per acre or \$254,000 ($\$2900 \times 87.49 = \$253,721$ rounded to \$254,000).

17 Landowners contended that the highest and best use of the Groom Mine was tourist
18 commercial—"a use where 250 people a day visit the Property for a fee, with no capital
19 improvements, drawing on the established market interest in, and demand to see Area 51 and
20 drawing on the regional tourism hub of Las Vegas." Landowners' Proposed Findings of Fact
21 and Conclusions of Law ("FFCL") (ECF No. 654), p. 5, ll 13-18, ¶¶ 140, 215. Based on his
22 determination of highest and best use Landowners contended the just compensation owed by the
23 United States was \$49,870,000. Landowners' MAI appraiser testified the Groom Mine had the
24 potential for generating \$41,062,500 in annual tourist revenue because it is the only private
25 property in the world with a clear and unobstructed view of the Air Force operating base
26 commonly referred to in the popular culture as Area 51. Landowners' appraiser testified that
27 there were no other large acreage properties with tourist commercial highest and best use in
28 Lincoln County or other rural Nevada counties surrounding Lincoln County. He therefore

1 selected sales of tourist commercial properties in the Las Vegas metropolitan area to find similar
 2 sales with a similar highest and best use and potential to draw visitors similar in number as the
 3 Subject Property. Landowners' Proposed FFCL, ¶ 268. He testified comparable tourist
 4 commercial properties in the Las Vegas metropolitan area would sell for between \$125,320 per
 5 acre and \$1,187,931 per acre. After making adjustments to his selected comparable sales, he
 6 concluded the fair market value on date of taking "was \$570,000/acre for the patented acres with
 7 the unpatented acres contributing to that value." Landowners' Proposed FFCL, ¶ 301. ($\$570,000$
 8 $\times 87.49 = \$49,870,000$).

9 The Commission was instructed that highest and best use "is not necessarily what the
 10 owner was using the property for at the time of taking. However, in the absence of proof to the
 11 contrary, the current use is presumed to be the best use." Commission Instruction No. 13. For
 12 the reasons explained in this report, the Commission finds that the highest and best or most
 13 profitable use on the date of value was its existing rural residential use. Landowners did not
 14 present sufficient evidence to overcome the presumption that the property's existing use on the
 15 date of value was its highest and best use. Although Landowners presented evidence to the
 16 contrary, they did not meet their burden of showing by a preponderance of the evidence that
 17 there was market demand or the prospect of market demand for their proposed large-scale tourist
 18 commercial use in the reasonably foreseeable future.

19 **II. FINDINGS OF FACT**

20 **A. Joint Pretrial Order**

21 The parties stipulated in their Joint Pretrial Order (ECF No. 566) that the following facts
 22 are admitted and required no proof at trial. The Commission therefore accepts these facts as true,
 23 and binding on the parties.

24 1. This is a case to determine the just compensation for the taking of approximately
 25 400 acres of patented and unpatented mining claims known as the "Groom Mine" in Lincoln
 26 County, Nevada (the "Property"). Stipulated Fact No. 1.

27 2. The United States exercised its power of eminent domain and took the Property
 28 on September 15, 2015. Stipulated Fact No. 2.

1 3. The date of taking in this case is September 15, 2015; however, the parties agree
2 that the date of value is September 10, 2015 (“Date of Value”) – the date the United States filed
3 its Complaint in Condemnation. Stipulated Fact No. 3.

4 4. Just compensation is the fair market value of the Property on the Date of Value.
5 Stipulated Fact No. 4.

6 5. The United States took the Property for the public purpose of operating the
7 military test and training facility known as the Nevada Test and Training Range (“NTTR”).
8 Stipulated Fact No. 5.

9 6. On October 17, 1984, Congress enacted Public Law 98-485 (“1984 Withdrawal”),
10 which authorized the withdrawal of 89,600 acres of federal land in Lincoln County, Nevada,
11 from public use for military purposes (“1984 Withdrawal Area”). However, the 1984
12 Withdrawal was made “[s]ubject to valid existing rights,” such as the patented and unpatented
13 mining claims comprising the Property. The legislative history from the 1984 Withdrawal also
14 confirms that the Property was not within the scope of the 1984 Withdrawal. Stipulated Fact No.
15 6.

16 7. Prior to the 1984 Withdrawal, the Federal land surrounding the Property was open
17 to the public and administered by the United States Department of the Interior, Bureau of Land
18 Management. Stipulated Fact No. 7.

19 8. After the 1984 Withdrawal, the Property was a private inholding within the 1984
20 Withdrawal Area from enactment of Public Law 98-485 until the taking in 2015. Stipulated Fact
21 No. 8.

22 9. For valuation purposes in this case, a buyer of the Property could be granted
23 permission to enter the NTTR to access the Property for themselves, their employees, and
24 business visitors. The Air Force also would not prohibit the number of persons allowed to access
25 the Groom Mine, nor would the Air Force constrain or interfere with access to the Property
26 beyond those basic restrictions applicable to anyone seeking entry to the NTTR. Stipulated Fact
27 No. 9.

28 10. The Property generally provides an unobstructed and elevated view, from six to

seven miles away, of improvements at a remote operating location on the far side of dry Groom Lake. While not a term used by the Air Force, these improvements are referred to by the Landowners as Area 51. Stipulated Fact No. 10.

11. The Property generally provides an unobstructed view of classified national defense missions occurring within the NTTR and its remote operating locations. Stipulated Fact No. 11.

12. The Property is located in Lincoln County, Nevada. Stipulated Fact No. 12.

13. The Property is located at the southern end of the Groom Mountain Range at an elevation ranging from approximately 5000 to 5800 feet. Stipulated Fact No. 13.

14. The Property is located approximately 150 road miles from downtown Las Vegas. Stipulated Fact No. 14.

15. The Property is located approximately 39 road miles from the closest town, Rachel, Nevada. Stipulated Fact No. 15.

16. The nearest rail connection is in Caliente, Nevada. Stipulated Fact No. 16.

17. The Landowners' family has owned the Property since approximately 1885. Stipulated Fact No. 17.

18. The Property consists of six patented mining claims totaling approximately 87.49 acres and 15 unpatented mining claims totaling approximately 309.9 gross acres. Stipulated Fact No. 18.

19. A patented mining claim is one for which the federal government has passed its title to the claimant, making it private land equivalent to fee simple ownership. Stipulated Fact No. 19.

20. An unpatented mining claim is Federal land containing a mineral for which a claimant has asserted a right of possession. This right is limited to the extraction and development of the mineral and title remains with the Federal Government. Stipulated Fact No. 20.

21. The surface of unpatented mining claims can only be used for mining related activities and to access patented claims. Stipulated Fact No. 21.

22. As of the Date of Value, there was water present on the Property but the Property did not include any adjudicated water rights as the Groom Lake Valley Basin has not been adjudicated. Stipulated Fact No. 22.

23. As of the Date of Value, there were nine cabin structures on the Property and several miscellaneous structures. Stipulated Fact No. 23.

24. There are inactive mineral processing features on the Property, including historical prospect pits, a main shaft, hoist/headframe remnants, open mine shafts and tunnels, and the remains of a former mill which was destroyed in 1954. Stipulated Fact No. 24.

25. As of the Date of Value, the Landowners had not sought to have the improvements on the Property receive any designation as historic structures, such as listing on the National Register for Historic Places. Stipulated Fact No. 25.

26. As of the Date of Value, the Property was not serviced by public utilities. Stipulated Fact No. 26.

27. For calendar years 2007-2014, according to U.S. Air Force records, Defendant Landowners and their guests visited the Property between five to sixteen times each year. These visits typically were a few days in length (e.g., a long weekend). The shortest such visit was one day in length, and the longest such visit was nine to ten days in length. Stipulated Fact No. 27.

28. As of the Date of Value, the Property was zoned A5-Agricultural. Stipulated Fact No. 28.

29. The Property has not been used for any commercial activities nor generated income since 1956. Stipulated Fact No. 29.

30. The Landowners never sought to sell any portion of the Property nor did they receive unsolicited written offers to purchase any portion of the Property in the 10 years prior to the Date of Value. Stipulated Fact No. 30.

31. The tourist commercial use proposed by Landowners' expert, Tio DiFederico, involving no capital improvements, is physically possible. Stipulated Fact No. 31.

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B. Commission's Findings Of Fact

32. The topography is steep in parts. Def. Ex. 51 (Draft EIS) at TDG WF 001924; Vol. IV, Tr. 240:14-17 (DiFederico). The property has a desert climate, and the vegetation on the property is consistent with the surrounding desert terrain. *See* Def. Ex. 51 at TDG WF 001945.

33. Most of the cabins date to the early 1900s and are in poor to average condition. *See* ECF 574 (Joint Proposed Site Visit Instructions) at 5-6 (Stop 1 description); Vol. III, Tr. 22:13-22 (Sheahan); Vol. VI, Tr. 176:23-177:2 (Neville); Pl. Ex. 306 (photos).

34. The A-5 zoning designation permits agricultural related uses as of right, not commercial tourism. Pl. Ex. 295(a) at § 13-5L-2.

35. The Groom Mine did not have a special use permit of any kind at the Date of Value. Vol. III, Tr. 140:13-23 (Sheahan).

36. The Groom Mine is located approximately 150 road miles from downtown Las Vegas, and the drive from Las Vegas to the Groom Mine takes about 2.5 hours. Stip. Fact No. 19; Vol. VI, Tr. 171:8-9 (Neville). The last 27 miles are off State Highway 375. Vol. VI, Tr. 171:22-24 (Neville). To reach the property from State Highway 375, a vehicle must travel: 15 miles on a gravel road; then one mile on a paved road to a NTTR security checkpoint; then eight miles on a paved road inside the NTTR. The last three miles are on a narrow dirt road. *Id.*, Tr. 171:12-21.

37. The nearest town, Rachel, is about 52 miles from the Groom Mine (via the back gate). Vol. VI, Tr. 182:16-183:2 (Neville). Rachel has a population of roughly 60. *Id.*, Tr. 183:3-4 (Neville). There is no school, gas station, grocery store, or post office in Rachel. *Id.*, Tr. 183:5-14 (Neville). The only commercial establishment in Rachel is the Little A'Le'Inn, a small, alien-themed restaurant and gift shop. Vol. VI, Tr. 183:15-16 (Neville); Vol. IV, Tr. 154:3-6 (Harris).

38. The nearest medical facility to the Groom Mine is in Caliente, about an hour away. Vol. V, Tr. 232:6-20 (DiFederico). Any critically injured or ill person at the Groom Mine would need to be taken to Las Vegas or to St. George, Utah. Def. Ex. 66 at TDG Rpt 00061;

Vol. V, Tr. 232:21-24 (DiFederico).

39. Lincoln County, where the property is located, has a total population of about 5,000. Vol. V, Tr. 187:8-10 (DiFederico); Vol. VI, Tr. 180:25-181:1 (Neville).

40. Before 1984, the public could enter upon and hike the BLM land surrounding the Groom Mine, including land south of the Groom Mine that is closer to the remote operating location near Groom Lake. Vol. III, Tr. 176:4-19 (Sheahan). There was no charge to access this BLM land. *Id.*, Tr. 176:4-21 (Sheahan).

Landowners' Use Of The Groom Mine Prior To The Taking

41. Landowners stopped residing full-time at the Groom Mine in the mid-1950s when mining operations ended. Vol. III, Tr. 143:4-6 (Sheahan).

42. For the 60 years preceding the taking, Landowners used the Groom Mine as an occasional recreational retreat.¹ Vol. III, Tr. 157:21-158:6 (Sheahan).

43. For calendar years 1979-1986, according to Air Force correspondence, Landowners visited the Groom Mine about four times per year with a duration of between two and 10 days per visit. Pl. Ex. 18. Landowners did not dispute this frequency of visits in responsive correspondence back to the Air Force. Pl. Ex. 20; Vol. III, Tr. 156:12-16 (Sheahan).

44. Popular culture interest in "Area 51" began in the 1980s and reached its apex in the 1990s. Vol. III, Tr. 141:25-142:3 (Sheahan); Vol. VI, Tr. 52:12-14 (Moeder).

45. Landowners never pursued Groom Mine tourism in the 1990s or at any time thereafter. Landowners never charged anyone to visit the property. They never developed any business plans for a tourism use. They never contacted potential tourism operators or investors. They never attempted to obtain financing for a tourism operation. They never improved the property for a tourism use. And, before the taking, they never attempted to change the A-5 agricultural zoning designation or obtain a special use permit necessary for commercial tourism. Vol. III, Tr. 139:2-20, 140:13-141:12 (Sheahan).

46. No one approached Landowners about buying the Groom Mine for a potential

¹ Landowners also performed mining assessment work on their occasional visits to the property. Vol. III, Tr. 157:21-158:6 (Sheahan). Landowners needed to perform this assessment work in order to maintain their unpatented mining claims. *Id.*, Tr. 158:7-12 (Sheahan).

1 tourism use. *Id.*, Tr. 141:16-20; Stip. Fact No. 39.

2 47. It is uncontested that the Subject Property, is the only private and legally
3 accessible property in the world with a clear and unobstructed view of Area 51.

4 48. The Commission finds that in this case, exclusion of the Project influence means
5 that the fair market value of the Property is to be determined without consideration of: the
6 Government's need to acquire the Property as a "buffer area for the NTTR" or the fact that "use
7 of the NTTR has increased in complexity and tempo over the last several decades" to a point
8 where the "Air Force can no longer test and train securely while civilians are present at the
9 Property due to its location inside the NTTR and increasing national security demands."
10 However, the Commission may consider that "the Property was a private inholding within the
11 1984 Withdrawal Area" with access and A-5 zoning until the taking in 2015. Stipulated Fact No.
12 10 at ECF No. 566 at 4.

13 49. *Area 51* is a secret military base located on Groom Lake that has become a
14 location widely believed in a segment of the popular culture to be where UFOs or aliens have
15 been stored by the Government and where alien technology is tested. Tr. Trans. Vol. 4 at 160:16-
16 20 and Vol. 5 at 9-24:1. More specifically, it is believed in a segment of the popular culture that
17 in the 1950's a UFO crashed in Roswell, New Mexico and those remains were transported to
18 *Area 51* for testing. Pltf. Ex. 536 and Def. Ex. 68:380-382. It is known that the U-2 and Oxcart
19 spy plane programs were run at *Area 51*. Def. Ex. 22:TDG WF 001428. The Government
20 conceded that the Landowners proved that people are interested in *Area 51*. Tr. Trans. Vol. 8 at
21 46:6.

22 50. Evidence produced at trial confirmed *Area 51* has been a national and
23 international cultural phenomenon and place of significant interest for several decades. Tr.
24 Trans. Vol. 5 at 9-24:1 and Def. Ex. 67. Evidence was admitted showing that outside surveys
25 from 2012 by the National Geographic channel indicated more than one-third of respondents said
26 "they believed aliens have visited Earth, and almost half were not sure. Only 17 percent said
27 they did not believe so." Def. Ex. 69a. And, that people who are interested in UFOs and aliens
28

are also interested in *Area 51*. Def. Ex. 68 opening page.² Def. Ex. 69a.

51. [LO 37] Evidence was provided that the Google hits for “*Area 51*” range anywhere from 38 million to over 59 million. Tr. Trans. Vol. 5 at 9:8-19. Evidence was presented that there are over 1 million YouTube videos relating to *Area 51* and “one video that has 9.9 million views” and approximately 20 other videos that had 3 million views. Tr. Trans. Vol. 5 at 17:19-18:4.

52. The evidence produced at trial demonstrated that there have been numerous television shows, documentaries, movies, books, and merchandise which relate to *Area 51*. Def. Exs. 4, 67, 68 and Tr. Trans. Vol. 5 at 9-13. Notable shows, movies, books and merchandise include, without limitation: “Ancient Aliens;” “the X-Files;” the “Independence Day” movie franchise; the “Indiana Jones” movie franchise; the book “*Area 51 An Uncensored History of America’s Top-Secret Military Base*” authored by Annie Jacobsen³ and on the National Best Seller’s List; and, Bud Light’s production of *Area 51* themed beer cans. Def. Exs. 4, 67, and 68. Evidence was adduced that prior to moving to Summerlin in 2019, Las Vegas’ Triple-A minor league baseball team was named “The Las Vegas 51’s” in reference to *Area 51*. Tr. Trans. Vol. 7 at 144:8-9.

53. Evidence introduced by the Government confirms that prior to its withdrawal “since 1993, visitation to the White Sides area [an area separate and apart from the 1984 Withdrawal Area] has increased, primarily as a result of media attention and networking among Unidentified Flying Object (UFO) and military viewing groups.” Pl’s Ex. 056:LO 00000388 (AS) (internal citations omitted).

54. Evidence was presented that in July of 2019, 2 - 3.5 million people signed up on Facebook to “Storm *Area 51*.” Tr. Trans. Vol. 4 at 157:11-15 and Vol. 5 at 49:6-8. This was widely covered by national news outlets. This evidence was not contravened by the Government.

² Copies of the book “*Area 51: An Uncensored History of America’s Top Secret Military Base*” by Annie Jacobsen were provided for the Commissioners at trial. Def. Ex. 68.

³ Ms. Jacobsen is an author and also a producer involved in the popular Jack Ryan series on Amazon among other works. Tr. Trans. Vol. 5 at 10:24-11:3.

1 55. Government witness, Col. Zuhlke confirmed that from the 1984 Withdrawal
2 “there’s no limit on how many people the Sheahan Family can bring onto their property” and
3 “after the 1984 withdrawal hearing, there was nothing in the record which limited when the
4 Sheahan Family could come onto the property.” Tr. Trans. Vol. 6 at 34:23-35:1 and 37:15-19.

5 56. The Commission experienced the “basic restrictions” for the Site Visit and the
6 “basic restrictions” consisted of a background check and security screening at the Air Force gate
7 similar to standard airport screening.

8 57. The Commission finds that substantial evidence was submitted to confirm that as
9 of the Date of Value, the Subject Property had full access rights, consistent with Stipulated Fact
10 No. 12.

11 58. As part of the 1984 Withdrawal, on June 1 and 5 of 1984, the Air Force issued
12 letters to then Congressman Harry Reid and Congresswoman Barbara Vucanovich concerning
13 the effect of the 1984 Withdrawal on the Property. Def. Exs. 55 and 56. These letters were
14 signed by Colonel Albert L. Barbero from and on behalf of the United States Air Force. *Id.* In
15 these letters the Air Force stated, “[t]he Sheahans will continue to have access to the Groom
16 Mine. Their legal rights to own, operate and sell the mine are not affected by the proposed land
17 withdrawal.” *Id.* The Air Force recognized that it “would have no authority to deny access to
18 any employees or business visitors of the Sheahans.” *Id.* And, that the “Air Force could only
19 terminate the Sheahans’ rights to Groom Mine by initiating condemnation proceedings or
20 purchasing the property. At this time the Air Force has no intention of taking such action.” *Id.*
21 The Air Force summarized that “the Sheahans possess legal rights regarding the Groom Mine
22 which the Air Force has no plans to interrupt.” *Id.*

23 59. Also, as part of the 1984 Withdrawal, on July 6, 1984, the Deputy Assistant
24 Secretary of the Air Force, James F. Boatright, represented directly to the Landowners on behalf
25 of the Air Force “to assure you” that “by its proposed [1984] withdrawal [the Air Force] has
26 no intention of encroaching upon your established rights or entitlements.” Def. Ex. 57 (emphasis
27 added). “Your legal rights to own, operate and sell your mine are not affected by the proposed
28 land withdrawal.” *Id.* The Air Force stated it “would not deny access to your family, any of

1 your employees or business visitors.” *Id.* “The Air Force could only terminate your rights
2 through condemnation or purchase of the property. We have no intention of initiating such
3 actions.” *Id.*

4 60. As further evidence of the Subject Property’s access rights, the Landowners
5 admitted deposition testimony from Terry Ochal (NTTR Liaison Officer), disclosed by the
6 Government as the individual with “[i]nformation pertinent to landowner and guest access...
7 based on personal and organizational knowledge.” Def. Ex. 254:2.⁴ Government Witness, Col.
8 Zuhlke, confirmed that for purposes of these proceedings, Mr. Ochal was the individual who
9 would have the most knowledge from the Air Force about what the access conditions were as of
10 the Date of Value. Tr. Trans. Vol. 6 at 30:6-24.

11 61. Mr. Ochal testified that: he had worked with the Sheahans regarding access to the
12 Property from 2007 to 2015 which was carried over from his predecessor (Tr. Trans. Vol. 3 at
13 225:10-14, 226:4-6, 227:25-228:10); his job was to ensure that their visits in and out went
14 smoothly (Tr. Trans. Vol. 3 at 227:10-24); “the Sheahans had the right of access to their property
15 for themselves, their family, employees and business visitors” (Tr. Trans. Vol. 3 at 232:16-19);
16 the Air Force would not “obstruct” access to the Property (Tr. Trans. Vol. 3 at 232:20-23); the
17 Sheahans could invite any individuals with clear backgrounds to visit the Property (Tr. Trans.
18 Vol. 3 at 247:6-10); prior to the taking, the Sheahans and their invitees were not required to go
19 through any metal detectors and were not searched when accessing the Property (Tr. Trans. Vol.
20 3 at 245:18-25); the stop at the Air Force security gate was “just a name check” that would only
21 take a “few minutes per vehicle” (Tr. Trans. Vol. 3 at 236:13-22); the Sheahans and their invitees
22 could bring firearms, cameras and cell phones to their Property prior to the taking (Tr. Trans.
23 Vol. 3 at 236:23-237:6); that in some instances 35 people or more invited by the Sheahans would
24 visit the Property at a given time (Tr. Trans. Vol. 3 at 242:15-18); and, people that were not
25 invited by the Sheahans could not gain access beyond the Air Force security fence (Tr. Trans.

26
27 ⁴ Def. Ex. 254 is Deposition Ex. 2 to Mr. Ochal’s deposition which was provided by Landowners’
28 counsel to the Commission as one of the exhibits referenced in Mr. Ochal’s designated deposition
segments played on day 3 of trial. Counsel for the Government had no objection to the admission of
Def. Ex. 254. Tr. Trans. Vol. 3 at 222:3-8.

1 Vol. 3 at 242:22-243:5).

2 62. Mr. Ochal further testified that from approximately 1984 to 2015, the
3 Landowners, as a courtesy, provided the Air Force with a list of visiting individuals and
4 advanced notice of visits, to prevent any delays at the NTTR security gate, as the Air Force was
5 not permitted to deny access to the Landowners, their family, their employees or the
6 Landowners' business visitors. (Tr. Trans. Vol. 3 at 241:22-242:2). Mr. Ochal testified
7 consistently with Mr. Sheahan that this courtesy was voluntary. Tr. Trans. Vol. 3 at 232:24-
8 233:18, 237:7-14 and 248:11-16.

9 63. Mr. Sheahan testified that on and before the Date of Value water was available on
10 the Property from natural springs and a well, that the water had been used continuously by the
11 Sheahan Family, and that water was always available. Tr. Trans. Vol. 3 at 96:2-5 and 99:9-16.

12 64. However, Mr. Sheahan testified that for many decades the Property was served by
13 electricity through a generator and battery banks (Def. Ex. 7.4b and Tr. Trans. Vol. 3 at 102:18-
14 22 and 103:13-104:13); that water was always diverted from springs on the Property and used to
15 fill tanks which served the buildings on the Property and provided ample water for uses on the
16 Property (Def. Exs. 7.3a and 7.7G and Tr. Trans. Vol. 3 at 100:19-101:7); and, gas/propane was
17 used on the Property for hot water heaters and stoves (Def. Ex. 7.4c and Tr. Trans. Vol. 3 at
18 101:18-20).

19 65. Both sides' appraisers testified that the existing use of a property is not always its
20 highest and best use. Mr. Neville understood that "some people just don't use their property to
21 the highest and most profitable use sometimes." Tr. Trans. Vol. 7 at 30:17-19. Mr. DiFederico
22 similarly testified that the highest and most profitable use of property is not limited to the use at
23 the time of the taking and that "people sometimes just don't use their properties to their highest
24 and best use." Tr. Trans. Vol. 4 at 245:24-246:11.

25 **III. CONCLUSIONS OF LAW**

26 66. Landowners contended that the Groom Mine should be valued based on a tourism
27 operation involving 250 daily customers, coming on the Groom Mine 365 days per year, with
28 each visitor paying an entrance fee of \$400 and an additional \$50 for knickknacks. Vol. V, Tr.

43:2-6; 47:9-12 (DiFederico). According to Landowners' expert appraiser, Mr. DiFederico, this tourism operation would have generated annual gross revenue of \$41.1 million (91,250 annual paying customers x \$450 = \$41,062,500). *Id.*, Tr. 47:9-12 (DiFederico).

67. Landowners did not put forward any market evidence supporting the financial feasibility of an alternative commercial tourism scenario. The Commission may not speculate as to whether some alternative tourism scenario may have been probable in the near future. See Instruction No. 15 ("An opinion of market value must be supported by market evidence. Evidence must not be vague or speculative, nor should you consider any testimony of mere possibilities unsupported by market evidence.").

68. The Commission also may not attempt to value some "smaller scale" tourism scenario (e.g., where tourists come to the property one weekend per month) because Landowners did not put forward any sales to value such a "small scale" commercial tourism use. Mr. DiFederico selected his five comparable sales because those properties had the potential of generating revenue of \$41.1 million annually. Landowners' counsel made this clear in closing:

What the appraiser is required to do is go find properties that have similar earning potential as that property that's being appraised.... And in this case, that's a large tourist commercial property.... Again, if you have a property that you've determined [] has the potential to earn \$41 million a year, you have to go find something similar that has the potential to earn a similar income.

Vol. VIII, Tr. 37:25-38:4, 39:13-16.

69. For all of these reasons, the issue is not whether any commercial tourism use was reasonably probable at the Date of Value (i.e., physically possible, legally permissible, financially feasible, and maximally productive). The issue is whether Landowners have supported their proposed large-scale tourism use involving bringing 91,250 people to the Groom Mine, paying \$450 each, year after year.

A. Landowners' Proposed Large-Scale Tourism Use was Speculative, Not Reasonably Probable, at the Date of Value

70. Landowners retained a Nevada MAI appraiser, Keith Harper, to provide an appraisal review of the appraisal done by the government's appraiser, Warren Neville. In response to questions by Commissioner Pro, Mr. Harper testified that except for his analysis of

1 highest and best use, Mr. Neville' appraisal complied with standard practices, USPAP, and the
2 Uniform Standards of Federal Land Acquisitions ("Yellow Book).

3 71. Mr. Harper opined that Mr. Neville did not perform a sufficient financial
4 feasibility analysis to render a conclusion that a tourist commercial use was speculative. Tr.
5 Trans. Vol 7 at 152:8-18; Landowner's FFCL, 239.

6 72. The Commission has been instructed that "[i]n determining whether a proposed
7 use was needed or likely to be needed in the reasonably near future, you must determine, based
8 on a preponderance of the evidence, that there was market demand or the prospect of market
9 demand for such use in the reasonably near future. The demand, or market, requirement means
10 that the highest and best use of a property must be financially feasible. A proposed use should be
11 considered only to the extent that the prospect of demand for such use would have affected the
12 price that a willing buyer would have offered for the property as of the taking." Commission
13 Instruction No. 13, (ECF No. 600 at 16).

14 73. The Commission finds Landowners have not met their burden of establishing by a
15 preponderance of the evidence that there was market demand or the prospect of market demand
16 for Landowner's proposed large-scale tourist commercial use in the reasonably foreseeable
17 future for the reasons explained below.

18 74. Landowners' speculative proposed tourism use cannot be the basis for
19 determining the Groom Mine's market value. Vol. VII, Tr. 151:19-21 (Harper) ("Q. And do
20 you think a tourist commercial use of the subject property, as of September 10, 2015, was
21 speculative? A. Well, I don't know that it was -- well, yes.").⁵ However, Mr. Harper also
22 testified that all land use is speculative until the financial feasibility analysis is complete.

23 75. Landowners' decision not to pursue any tourism use at the Groom Mine in the
24 decades preceding the taking demonstrates that tourism was not reasonably probable in the
25 reasonably near future as of September 10, 2015.

26 76. Landowners had 25-30 years to attempt to profit from the Groom Mine's

27 ⁵ Mr. Harper went on to testify that "any use is speculative, even the rural residential." Vol. VII, Tr.
28 151:21-22 (Harper). But there is nothing speculative about how Landowners actually used the property
for 60 years prior to the taking.

1 proximity to “Area 51.” Popular culture interest in Area 51 began in the 1980s and reached its
2 apex in the 1990s. Vol. III, Tr. 141:25-142:3 (Sheahan) (“Q. And you would agree that Area 51
3 has been known in popular culture since the 1980s? A. I would say it was a little bit before that,
4 but, you know, it really took off in the mid – early to mid ’80s.”); Vol. VI, Tr. 52:12-14
5 (Moeder) (“Q. And do you know when the interest in Area 51 was at its peak? A. That would
6 be the early to mid 1990s.”).

7 77. Landowners never pursued Groom Mine tourism in the 1990s, during peak
8 interest in Area 51, or at any time thereafter. Vol. III, Tr. 141:5-15 (Sheahan). Landowners
9 never charged anyone to visit the property; they did not develop any business plans for a tourism
10 use; they did not contact potential tourism operators or investors; they did not attempt to obtain
11 financing for a tourism operation; they did not improve the property for a tourism use; and they
12 did not attempt to change the zoning or obtain a special use permit necessary for commercial
13 tourism. Vol. III, Tr. 139:2-141:1 (Sheahan).

14 78. Landowners did not receive any offers for the Groom Mine for a potential tourist
15 use, and no one approached Landowners about buying the property for a potential tourism use.
16 *Id.*, Tr. 141:16-20; Stip. Fact No. 39.

17 79. Market participants do not leave tens of millions of dollars sitting in the desert for
18 decades. As explained by Mr. Neville, “if [a] property is ... ripe for development, market forces
19 will seek it out and try to, at least, propose that type of development.” Vol. VII, Tr. 31:10-13;
20 *see also* Vol. VI, Tr. 52:18-23 (Moeder) (“[O]ne of the questions I get from developers that
21 approach a land investment if it hasn’t been done is why hasn’t it been done. And so the
22 question that would be of interest to a developer is when was the peak interest. When would
23 have been the prime, opportune market time to develop the property.”). Keith Harper,
24 Landowners’ review appraiser, agreed that, “as we all know, the historical use of a property, yes,
25 is a factor in analyzing the property.” Vol. VII, Tr. 136:5-6.

26 80. Given that there was no demonstrated market interest in developing the Groom
27 Mine for tourism in the 1990s, when there was peak interest in Area 51, it is not reasonable to
28 assume that such development would materialize in 2015, when interest in Area 51 was

1 declining.

2 81. The Commission finds Landowners failed to show market demand for their
3 proposed large-scale tourism use. Landowners' evidence demonstrates only that (a) there is
4 popular culture interest in Area 51, and (b) 16% of Las Vegas tourists take day-trip excursions.
5 Landowners did not establish by a preponderance of the evidence that 91,250 people would pay
6 \$400 each to visit Groom Mine for a view of Area 51 year after year.

7 **Interest in Area 51 Does Not Establish Demand**

8 82. The Groom Mine offers a view, from 6-7 miles away, of a remote Air Force
9 operating location near dry Groom Lake that popular culture describes as "Area 51."
10 Landowners put forward evidence that there is popular culture interest in Area 51. They cited
11 Internet search hits, YouTube videos, television shows, movies, books and articles referencing
12 Area 51.

13 83. General interest in Area 51 does not establish market demand for 91,250 people to
14 visit the Groom Mine. As explained by the United States' real estate economist and market
15 expert, Nathan Moeder, general interest "doesn't give a developer or investor the ability to ...
16 translate that [interest] to specific numbers to quantify demand. So general interest doesn't
17 translate to a comfort level for developers and investors." Vol. VI, Tr. 51:18-22.

18 84. The "Storm Area 51" events in September 2019 demonstrate that interest does not
19 establish demand. Landowners' witnesses testified that millions of people signed up to "storm"
20 Area 51. Vol. IV, Tr. 157:11-15 (Harris); *Id.*, Tr. 261:12-14 (DiFederico); *see also* Vol. VIII, Tr.
21 27:10-14 (Leavitt closing) ("And then when there was even the slightest doubt that people could
22 have an opportunity to see Area 51 illegally in the Storm Area 51 event, 3 million people signed
23 up. Think about that for just a minute, how many people 3 million people is."). This interest
24 resulted in Connie Travis staging an event in Rachel at the Little A'Le'Inn, called "Alienstock,"
25 and George Harris staging a separate event in Hiko at the Alien Research Center, called "Area 51
26 Basecamp." Vol. IV, Tr. 181:12-21 (Harris); Vol. VII, Tr. 79-88 (Mathews). The entertainment
27 at the "Area 51 Basecamp" event included Grammy nominated DJ Paul Oakenfold, "the father of
28 EDM music." Vol. IV, Tr. 183:22 (Harris). According to Mr. Harris, Mr. Oakenfold typically

1 “gets paid \$350,000 a show” but agreed to perform at Area 51 Basecamp “for free because he’s
2 an alien enthusiast.” *Id.*, Tr. 183:15-16.

3 85. However, the evidence at trial established that the Area 51 Basecamp event was
4 poorly attended. Mr. Mathews testified that organizers had waived the \$51 entrance fee by 9:15
5 p.m. on the first day of the event, prior to Mr. Oakenfold taking the stage. Vol. VII, Tr. 85:15-
6 86:8. Mr. Mathews personally counted about 100 attendees for Mr. Oakenfold’s performance.
7 *Id.*, Tr. 86:9-11, 88:10-12. *See* Pl’s Ex. 599.

8 86. The Commission finds the Storm Area 51 events were financial failures. Mr.
9 Harris testified that he canceled the second day of the Area 51 Basecamp. Vol. IV, Tr. 187:7-9.
10 He also admitted that he lost “a lot of money” staging the event. *Id.*, Tr. 187:10-12.

11 87. The “Alienstock” festival in Rachel, although better attended than Mr. Harris’
12 event, also lost money according to press reports. Vol. V, Tr. 167:11-168:5 (DiFederico). Mr.
13 Mathews testified that most “Alienstock” attendees parked for free across the highway. Vol.
14 VII, Tr. 82:25-83:2. Mr. Mathews counted just 38 cars the evening of Friday, September 20, in
15 the pay lot (and 230 cars parking for free). *Id.*, Tr. 83:3-8.

16 88. Landowners suggested that the events failed because they were “canceled.”⁶ *See*,
17 *e.g.*, Vol. V, Tr. 60:13-14 (DiFederico). But nothing was “canceled.” Vol. VII, Tr. 84:4-5,
18 84:23-85:14, 112:16-113:2 (Mathews). DJ Paul Oakenfold, the “father of EDM music,”
19 performed—and about 100 people were there for it.

23 ⁶ Landowners’ incorrect “cancellation” argument relates to the decision by one of the original
24 promoters of Alienstock, Matty Roberts, to disassociate himself with the Rachel event and to stage a rival
25 event in Las Vegas. Mr. Roberts initially said that Alienstock was canceled; however, Connie West said
26 that she would continue with the Alienstock event at the Little A’Le’Inn in Rachel (and Alienstock did, in
27 fact, go forward). *See* Vol. VII, Tr. 85:2-6 (Mathews) (“So what I read in the newspapers was that the
28 original organizer was planning a separate event here in Las Vegas, but Connie West, who was partnering
with the original organizer, she said that she was going to continue with the event [in Rachel].”). Mr.
Harris’s Area 51 Basecamp event was entirely separate from Alienstock. *Id.*, Tr. 85:9-14 (“And Judge
Pro raised a good point. So the cancellation issue or rival events in Las Vegas, that related to the events
in Rachel; right? A. Yes. Q. And not the Alien Research Center? A. No.”); Vol. IV, Tr. 181:12-21
(Harris).

1 1. Demand Requires Consideration of Price

2 89. In addition to relying on general interest in Area 51 to support market demand,
3 Landowners relied on a 2015 survey by the Las Vegas Convention and Visitors Authority
4 (“LVCVA”) indicating that 16% of Las Vegas tourists (or 6.9 million people annually) take a
5 day trip as part of their Las Vegas stay. Def. Ex. 71 (LVCVA Visitor Profile Study); Vol. V, Tr.
6 27:16-28:2 (DiFederico). Mr. DiFederico testified, without any market evidence or support, that
7 the Groom Mine could capture 4% of these excursions, a number between the draw of Red Rock
8 Canyon and Laughlin. *Id.* Tr. 38:1-5 (“Q. And so why did you choose the 4 percent between
9 Laughlin and Red Rock for this property here? A. It was just – I’m not a huge Laughlin fan
10 maybe. And I just thought we could do, you know, the demand would be higher than that.”).

11 90. According to Mr. DiFederico, 4% of the nearly 7 million Las Vegas visitors who
12 take day trips established 277,568 tourists would visit the Groom Mine annually *Id.*, Tr. 38:6-14.
13 Mr. DiFederico then reduced the number of expected Groom Mine tourists by two-thirds, to
14 91,250 expected visitors, to account for logistical obstacles. *Id.*, Tr. 42:11-19 (“I wanted to use
15 common sense and I said I think you should bring five groups of 50 out here.... You can do an
16 hour each.... Now you’re bringing out 250 people a day, which is 91,250, which is a third of the
17 demand. So, what I’ve done is made it realistic.”).

18 91. In addition to relying on the LVCVA data, Mr. DiFederico also pointed to several
19 comparable tourist properties as demand. These attractions included Roswell, New Mexico, and
20 Grand Canyon West, among several others.

21 92. Mr. DiFederico’s demand analysis relies on *ipse dixit*. No facts or data support
22 Mr. DiFederico’s conclusion that Groom Mine would attract fewer visitors than Red Rock
23 Canyon and more visitors than Laughlin. Mr. DiFederico “just thought” Red Rock Canyon
24 “would do a little better” and Laughlin would do worse because “I’m not a huge Laughlin fan
25 maybe.” Vol. V, Tr. 37:1-8, 38:1-5. Mr. DiFederico had no factual basis for his demand
26 conclusion; and it therefore deserves no weight. See Commission Instruction No. 15 (“An
27 opinion of market value must be supported by market evidence.”); see also, e.g., *Gen. Elec. Co.*
28 *v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing... requires a district court to admit opinion

evidence that is connected to existing data only by the *ipse dixit* of the expert.”).

93. In all events, the LVCVA survey does not provide a basis for determining demand. As explained by Mr. Moeder, the LVCVA survey “is at a 50,000 foot level.” Vol. VI, Tr. 50:25-51:2 (“I’ve never seen anybody just use a metropolitan wide survey to quantify demand.”). The survey does not provide any basis for determining demand to come to the Groom Mine. *Id.*, Tr. 59:7-12 (“Every major metropolitan has a convention and visitors bureau where they publish this type of information.... But you don’t translate those into a specific demand for a project.”).

94. Nothing in the LVCVA survey attempts to quantify visitor interest in alien-themed tourism, Area 51, or the Groom Mine. Def. Ex. 71; Vol. VI, Tr. 59:16-20 (Moeder) (explaining that, because the LVCVA survey does not have any question about alien tourism, there is no way to gauge interest in such tourism).⁷

95. More problematic, Mr. DiFederico failed to consider how price impacts demand. Vol. VI, Tr. 60:23 (Moeder) (“[Demand is] never in a vacuum for investors and developers.”). The more expensive a good (or excursion), the less demand there will be for it. Mr. Moeder explained this basic economic concept:

Q. And so how does price and demand, how does that relationship work with one another?

A. It’s an elastic relationship. They’re tied together. They go hand in hand. The price of any good is going to be tied to the demand for it. So the more expensive a product is, the less number of people that are willing to pay for it.... So they’re always interlinked. That’s a fundamental question that developers will always ask themselves is how much are we charging and what does that do to our demand. Is that market there. Can we push

⁷ Landowners elicited testimony from Mr. Harper that he has used LVCVA data to establish demand. But Mr. Harper’s testimony underscored that an appraiser’s demand analysis requires consideration of price and consideration of facts and data specific to the market being studied. Mr. Harper testified that he used LVCVA data to establish demand for a motel in Laughlin because the LVCVA survey includes hotel/motel average daily room rates and occupancy rates for the Laughlin market. Vol. VII, Tr. 130:1-10 (“Q. And is it your understanding that LVCVA Visitor Profile Study can also be used to determine demand? A. Oh absolutely. I use it all the time for demand. I just recently appraised an Extended Stay Motel in Laughlin. And, believe me, there’s not many people or groups that track data in Laughlin. And so the LVCVA actually does provide broken out statistics for the Laughlin market, and I relied heavily on that, the average daily room rate of the hotels and motels in Laughlin, the occupancy rate, the things that the LVCVA provides.”).

the price and still get the same number of people.

Id., Tr. 60:8-19.

96. The entrance fees for the attractions Mr. DiFederico used to support market demand for visitors to pay \$400 each to visit Groom Mine do not support his market demand analysis. The entrance fee for each attraction is a small fraction of Mr. DiFederico's hypothetical \$400 entrance fee for the Groom Mine, as shown in the table below:

Supposedly Comparable Attractions Supporting Demand For Groom Mine Tourism		
Attraction	Entrance Fee	Record Cite(s)
Roswell Crash Site	Sold for cattle ranch	Pl.'s Exs. 556, 556a; Vol. V, Tr. 260:14-262:12 (DiFederico)
Roswell UFO Museum	\$5	Vol. V, Tr. 18:14-23, 161:19-21 (DiFederico)
Roswell Festival	FREE	Vol. VI, Tr. 55:10-17 (Moeder)
Alien Research Center	FREE	Vol. V, Tr. 21:11-22:5 (DiFederico); Vol. IV, Tr. 160:1-3 (Harris)
Little A'Le'Inn	FREE	Vol. V, Tr. 22:6-23, 164:18-24 (DiFederico)
Nevada National Security Site Tour	FREE	Vol. V, Tr. 38:15-23, 163:25-164:8 (DiFederico)
Virginia City	\$8	Vol. V, Tr. 40:10-41:1, 165:10-14 (DiFederico)
Oatman	FREE	Vol. V, Tr. 41:10-18, 166:9-12 (DiFederico)
Calico	\$8	Vol. V, Tr. 42:1-2, 165:15-19 (DiFederico)
National Atomic Testing Museum (Las Vegas)	\$22	Vol. V, Tr. 18:5-10, 166:4-8 (DiFederico)
Stonehenge	£20	Vol. V, Tr. 39:22-40:3 (DiFederico); Vol. VI, Tr. 62:16-63:5 (Moeder)
Laughlin	FREE	Vol. V, Tr. 36:11-14 (DiFederico) ⁸

⁸ The Commission may take judicial notice that Laughlin is a city in Southern Nevada, and there is no cost of admission. Fed. R. Evid. 201.

Supposedly Comparable Attractions Supporting Demand For Groom Mine Tourism		
Attraction	Entrance Fee	Record Cite(s)
Red Rock Canyon	\$15 (vehicle)	Vol. V, Tr. 34:22-24 ⁹
Bryce Canyon National Park	\$35 (vehicle)	Vol. V, Tr. 34:1-2 (DiFederico) ¹⁰
Zion National Park	\$35 (vehicle)	Vol. V, Tr. 33:7-12 (DiFederico); Vol. VI, Tr. 67:7-8 (Moeder)
Death Valley National Park	\$30 (vehicle)	Vol. V, Tr. 30:13-17 (DiFederico) ¹¹
Grand Canyon National Park	\$35 (vehicle)	Vol. V, Tr. 31:3-6 (DiFederico); Vol. VI, Tr. 67:7-8 (Moeder)
Grand Canyon West	\$80	Vol. V, Tr. 31:7-32:9, 163:1-9 (DiFederico); Vol. III, Tr. 191:16-194:6 (Sheahan)

97. That 200,000 Las Vegas tourists visit Laughlin for free, or that 347,000 pay \$15/vehicle to enter Red Rock Canyon, does not establish that 91,250 Las Vegas tourists would pay \$400 to go to the Groom Mine.

98. Roswell underscores that price and demand are interdependent. Landowners elicited testimony that Roswell supports demand for Groom Mine tourism because Roswell, like Area 51, interests alien enthusiasts. Vol. V, Tr. 18:15-24 (DiFederico); *see also* Vol. VIII, Tr. 26:23-27:1 (Leavitt closing) (“On that first issue of demand, [Mr. DiFederico] looked, of course, did 180,000 people go to the UFO museum in Roswell. That’s evidence that it’s more probable than not that 180,000 people would come to the Sheahan Family property.”). But the Roswell festival is free, and the Roswell UFO Museum charges an admission fee of just \$5.00 (\$2 for

⁹ Landowners did not offer evidence on the admission fee to Red Rock Canyon. The Commission may take judicial notice of the official park website setting forth admission fees, <https://www.redrockcanyonlv.org/fees/>.

¹⁰ Mr. DiFederico testified that “tours” to Bryce Canyon, apparently where transportation is provided, cost \$200. Vol. V, Tr. 34:16-18. But the actual admission fee is \$35/vehicle, the maximum charge to visit any national park. *See* <https://www.nps.gov/aboutus/entrance-fee-prices.htm> (listing national parks where there is an entrance fee and the price of admission).

¹¹ Landowners did not offer evidence on the admission fee to Death Valley National Park. The Commission may take notice of the National Park Service website setting forth the \$30/vehicle admission. <https://www.nps.gov/aboutus/entrance-fee-prices.htm>

1 children). Vol. V, Tr. 161:19-21 (DiFederico); Vol. VI, Tr. 55:10-17 (Moeder).

2 99. Landowners also suggested in questions to Mr. DiFederico that prior owners of
3 the Roswell crash site charged visitors as much as \$250/person for VIP access to the property.
4 Vol. V, Tr. 246:14-18. But the article mentioning a \$250 admission fee makes clear that the
5 tours would be offered only for a few days during the annual Roswell festival, from July 5-9,
6 2018. Ex. 556a; Vol. V, Tr. 261:9-14 (DiFederico). Landowners offered no evidence of how
7 many people, if any, paid \$250 for the VIP tour during the one time the property was open to the
8 public.

9 100. Four months later, in November 2018, the Roswell crash site sold as a cattle
10 ranch, not for any tourism use. Pl. Ex. 556 (describing sale of property in November 2018 for
11 “ranching operations”); Vol. V, Tr. 162:3-20 (DiFederico).

12 2. Mr. DiFederico Otherwise Did Not Support His \$400 Entrance Fee

13 101. Mr. DiFederico testified that his \$400 entrance fee could be justified based on
14 discussions that he had with 12 tour booking companies as well as the fact that Adventure Photo
15 Tours charges \$200 for its “Area 51 Tour.” Vol. V, Tr. 20:11-20, 45:18-25 (DiFederico); *see*
16 *also* Vol. I, Tr. 57:5-16 (Leavitt opening) (“[H]e looked at the existing Area 51 tour where
17 people pay 200 bucks to not see Area 51. And he said, well, I know I can get that. He then
18 contacted the booking agencies that book for this Area 51 tour, there are about 12 of them....”);
19 Vol. VIII, Tr. 33:1-5 (Leavitt closing) (“He consulted several booking agencies who gave him a
20 number of \$300 to \$1,000 per person, and he concluded at \$400 per person.”).

21 102. These two data points do not support a \$400 admission price at the Groom Mine.

22 103. First, Mr. DiFederico’s telephonic conversations with 12 booking agents deserve
23 little weight. Vol. V, Tr. 20:11-20, 45:18-25 (DiFederico). One booking agent apparently told
24 Mr. DiFederico that a tour operator could charge \$1,000 for overnight stays. *Id.*, Tr. 149:24-
25 150:1. This hearsay conversation has no relevance because Mr. DiFederico’s analysis does not
26 contemplate overnight stays. *Id.*, Tr. 150:4-6. A second booking agent apparently told Mr.
27 DiFederico that a tour operator could charge \$300 to go to Area 51. *Id.*, Tr. 149:18-21. This
28 hearsay conversation lacks probative value because a \$300 entrance fee does not support Mr.

1 DiFederico's \$400 entrance fee. Mr. DiFederico did not testify to what the other ten booking
2 agents told him.

3 104. Landowners did not lay an adequate foundation to give Mr. DiFederico's
4 testimony about conversations with Area 51 tour operators much weight. Mr. DiFederico did not
5 know the names of the two booking agents. *Id.*, Tr. 148:12-14. He never met them. *Id.*, Tr.
6 148:15-17. He did not show the unnamed persons any photographs of the Groom Mine. *Id.*, Tr.
7 148:18-149:1. Nor did he testify regarding how long the two unnamed individuals had been
8 booking tours and whether they had any knowledge or expertise regarding how much tours
9 should cost.

10 105. With respect to the unnamed, unknown person who told Mr. DiFederico that a
11 \$300 entrance fee was possible, Mr. DiFederico did not testify how the person determined the
12 \$300 price, including how many people would pay \$300. Only 2,000 people take the current
13 "Area 51 Tour." Vol. V, Tr. 158:8-11 (DiFederico); Vol. VI, Tr. 56:23-57:25 (Moeder). Most
14 significant of all, Mr. DiFederico did not testify to what he told this unknown, unnamed person.¹²

15 106. The Adventure Photo Tours "Area 51 Tour" also does not support Mr.
16 DiFederico's \$400 admission fee. Landowners argued that if people are willing to pay \$200 to
17 go to Area 51's back gate, then they must be willing to pay more to see the distant Air Force
18 buildings. Vol. I, Tr. 57:5-16 (Leavitt Opening) ("[Mr. DiFederico] looked at the existing Area
19 51 tour where people pay 200 bucks to not see Area 51. And he said, well, I know I can get
20 that.").

21 107. There are at least three major flaws with this conclusion. First, there is no charge
22 to go the "Area 51 back gate." Anyone can go for free; Mr. Harris testified that he has gone
23 hundreds of times. Vol. IV, Tr. 175:13-24 (Harris).

24 108. Adventure Photo Tours charges \$200 for transportation and entertainment.
25 People pay to: ride in a luxury SUV for an entire day; get picked up and dropped off at their
26

27 ¹² For example, the record does not indicate whether Mr. DiFederico alerted the booking agent that the
28 Groom Mine experience would last just one hour and that there would be no capital improvements at the
Groom Mine, not even bathrooms.

1 hotel; have an entertaining tour guide; have lunch at the Little A'Le'Inn; view Native American
 2 petroglyphs; see a Joshua tree forest; and go to various "Area 51 sites," including the back gate,
 3 the black mailbox, the Alien Research Center, and McCarran International Airport (to see Janet
 4 Airlines). Vol. V, Tr. 156:17-158:7 (DiFederico); Vol. IV, Tr. 177:9-178:23 (Harris). The \$200
 5 that people pay for the tour is not tied to any interest in real estate. Vol. VI, Tr. 106:17-22
 6 (Weissenborn).

7 109. Second, about 2,000 people annually take the Adventure Photo Tours "Area 51
 8 Tour." Vol. V, Tr. 158:8-11 (DiFederico); Vol. VI, Tr. 56:23-57:25 (Moeder). But Mr.
 9 DiFederico assumed that 91,250 would visit the Groom Mine annually. That 2,000 people pay
 10 \$200 to go on an "Area 51 Tour" does not establish 91,250 people would pay \$400 to visit the
 11 Groom Mine. Vol. VI, Tr. 83:14-20 (Moeder) ("So when you go from what's empirically
 12 defensible, existing in the marketplace ... that's the 2,000. When you go to the next level of
 13 91,000 people ... there's no evidence of that. That's where it's speculative and that's where it's
 14 unreliable.").

15 110. Third, no facts or data support Mr. DiFederico's speculation that a Groom Mine
 16 tour operator could double the tour price (from \$200 to \$400) and increase attendance by a
 17 multiple of 46 (from 2,000 to 91,250).

18 111. Landowners put on no evidence about the financial feasibility of a tourism
 19 operation having less than 91,250 annual visitors. Vol. V, Tr. 159:16-19 (DiFederico) ("Q. And
 20 as part of your appraisal reports, you did not study how expenses should be adjusted if 8,000 or
 21 12,000 people are going out to the Groom Mine? A. No, I did not."). And Mr. DiFederico
 22 admitted in deposition that Groom Mine tourism may not be financially feasible if the tour
 23 operator only could get 12,000 annual visitors paying \$300 each (i.e. where price is 50% higher
 24 than the Adventure Photo Tour's price and attendance is sextupled). Mr. DiFederico testified:

25 Q. Mr. Leavitt asked you the following [in deposition]: Question. "Okay.
 26 As you sit here today, can you offer an opinion of whether ... the
 27 operation would be financially feasible if there were only 12,000 people
 going to the property at a \$300 charge?

28 "Answer. No. Because I'd have to redo all these. But my gut
 would tell me it wouldn't be feasible."

Did I read that correctly?

A. Yes.

Q. Now, if we could go to page 607 of your deposition, beginning at line 17. Mr. Leavitt asked you, "Okay. So I'm going to go back. So if there's a tour operation which currently exists which does not even allow an individual to see Area 51 and only approximately 2,000 people a year are taking that tour and it continues to operate, why would a tour that has 12,000 persons and goes onto the landowners' property and charges \$300 a person instead of \$200 a head not be financially feasible?

"Answer. Because there's different expenses getting to the property."

Did I read that correctly?

A. Yes.

Vol. V, Tr. 160:15-161:13 (DiFederico).

3. Mr. DiFederico Failed To Support That Visitors Would Pay \$50 Per Person On Knickknacks

112. Mr. DiFederico also did not support his assertion that Groom Mine visitors would spend \$50 on magnets, key chains, t-shirts, and other knickknacks. To justify this additional \$4.5 million revenue stream,¹³ Mr. DiFederico claimed that his family spends a lot on churros and sundries when they go to Disneyland. Vol. V, Tr. 46:7-14 (DiFederico) ("[W]hen I travel, I joke that I have a Churros Card for Disneyland...because my kids want to get churros all day. So you're spending money on knickknacks, T-shirt, key chain, a magnet, something...."). Mr. DiFederico's personal spending habits over the course of an entire day at Disneyland are an anecdote, not market evidence of what people would spend in one hour at the Groom Mine.

113. On cross-examination, Mr. DiFederico testified that George Harris, the owner of the Alien Research Center, also supported his assumed \$50 per person expenditures for knickknacks. *Id.*, Tr. 144:7-13. Mr. Harris testified otherwise. According to Mr. Harris, the Alien Research Center had 2,192 sales in 2015, and the average sale was \$26.75—for total annual revenue of \$58,636 (2,192 x \$26.75=\$58,636). Vol. IV, Tr. 168:20-24 (Harris).¹⁴

¹³ 91,250 x \$50 = \$4,562,500.

¹⁴ Landowners did not offer evidence regarding the percentage of visitors to the Alien Research Center who spend nothing. The average expenditure presumably would be materially less than \$26.75 if these

114. In addition, Mr. DiFederico's proposed large-scale tourism use must be rejected as speculative because Landowners failed to put forward credible market evidence of sustainable demand. As Mr. Moeder explained, establishing sustainable demand is critical: "If the demand is not there permanently or [is not] sustainable and it falls off, the value of that investment plummets. So a developer and investor wants to know that it is sustainable, number one." Vol. VI, Tr. 55:3-6 (Moeder).

115. Landowners failed to carry their burden of proving that demand for large-scale tourism at the Groom Mine could be sustained year after year. For this additional reason, their proposed highest and best use of large-scale commercial tourism is speculative and not reasonably probable in the reasonably near future.

116. The Property's A-5 zoning district does not exclude all commercial uses. In fact, as Mr. Lytle explained, the agricultural district conditionally permits a "broad range" of commercial uses beyond the legal uses by right. Vol. IV, Tr. 16:1-17:14 (Lytle). Examples of approvable uses include: bed and breakfast inns, golf courses, mining and milling operations, recreational camps and resorts, and recreational vehicle parks and campgrounds. Pl. Ex. 295(a) at § 13-5L-3. Each of these uses, however, requires a special use permit. *Id.*

117. The Lincoln County Master Plan further supports the fact that large-scale commercial tourism at the Groom Mine would require, at a minimum, a special use permit. Landowners introduced the following matrix from the Master Plan:

Zoning Designation Master Plan Designation	R 1	R M	R R-1	R R-2	R R-3	R R-4	R R-5	RR-6	RR-7	RR-8	D 1	C 2	M 1	M 2	SID	A 1	A 2	A 3	A 4	A 5	OS	MHP	HD
LDR	N	N	N	Y	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
MDR	Y	M	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	M	M
HDR	M	Y	M	M	M	M	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	M	M
MHP/RVP	M	Y	M	M	M	M	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	M
COMMERCIAL	M	M	M	M	M	M	M	M	M	M	Y	Y	M	M	N	M	M	M	M	M	N	M	M
L. INDUSTRIAL	N	N	N	N	N	N	N	N	N	N	N	M	Y	N	N	N	N	N	N	N	N	N	N
H.INDUSTRIAL	N	N	N	N	N	N	N	N	N	N	N	M	Y	Y	M	N	N	N	N	N	N	N	N
AGRICULTURE	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	M	N
PUBLIC	M	M	M	M	M	M	M	M	M	M	M	M	M	M	N	M	M	M	M	M	M	M	M
PARKS/REC.	M	M	M	M	M	M	M	M	M	M	M	M	N	N	N	M	M	M	M	M	M	M	M
OPEN SPACE	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
PUD	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N

M- WITH CONDITIONS Y- IS CONSISTENT N- IS NOT CONSISTENT

\$0 expenditures also were included in the overall count.

Def. Ex. 37 at CLARION WF 003754. As Mr. Lytle, Director of Planning for Lincoln County, explained, the County uses this chart to “vet proposed actions or potential uses in the county.” Vol. IV, Tr. 12:11-16 (Lytle). Using the matrix, the intersection of the agricultural and commercial zoning results in an “M,” which means a commercial use may be approved in the A-5 zoning district, but with conditions. *Id.*, Tr. 13:20-22. In other words, the Master Plan further establishes that commercial uses are inconsistent with an agricultural zoning designation absent a special use permit. So, while it is true that one goal of the master plan is to increase tourism¹⁵ (Vol. IV, Tr. 11:4-25 (Lytle)), it is also true that the master plan does not allow unrestricted large-scale commercial uses in agricultural zoning districts. If it did, there would be a “Y” not an “M” in the above matrix.

118. Additionally, the actions of Mr. DiFederico and Landowners themselves confirm that any reasonable buyer would expect approval from Lincoln County before putting the Groom Mine to a tourist commercial use. According to Mr. DiFederico, “special use permits are for things that are not specifically identified as an allowable use.” Vol. V, Tr. 175:19-20 (emphasis added). Mr. DiFederico therefore assumed that a special use permit was required for his proposed tourism use. *Id.*, Tr. 176:12-22 (“Q. And in your analysis, you did not treat the Groom Mine property as zoned for tourist commercial use at the date of value; correct? A. I -- I assumed that it would get the use permit and it would be able to operate.... I just thought you would probably get [a special use permit] because it would clear up things. When you come in with something that’s not directly identified as a use, you typically would apply for a special use permit.”).

119. Landowners spent thousands of dollars to obtain a post-taking advisory opinion on the possibility of a special use permit and zone change. Vol. III, Tr. 198:23-199:25

¹⁵ Mr. Lytle described increasing tourism as “one small facet of improved economic stability and sustainability in the county.” Vol. IV, Tr. 11:9-15 (Lytle). Mr. Lytle further explained that the economic fiber of Lincoln County includes the Air Force, which is not only a major employer, but which pays a significant sum per year to the County in lieu of taxes. *Id.*, Tr. 62:9-63:2; 66:6-12. And since unemployment remains high in the area (Def. Ex. 37 at CLARION WF 003740), the goal of increasing tourism cannot be viewed in isolation when other important goals of maintaining existing jobs and revenue streams also exist.

(Sheahan). This suggests that Landowners came to the same conclusion as Mr. DiFederico and Mr. Neville: commercial tourism of any kind likely required a rezoning or a special use permit. Vol. VI, Tr. 192:12-14 (Neville) (“Q. Is commercial tourism a permitted use under the agricultural zoning designation? A. No, it isn’t.”); *Id.*, Tr. 199:23-200:8.

120. Landowners argued that their post-taking efforts merely involved finding out what the “highest” use Lincoln County would have allowed on the Date of Value, not whether the County would have approved Mr. DiFederico’s highest and best use. Vol. III, Tr. 108:16-25; 199:16-22 (Sheahan); Vol. IV, Tr. 39:21-40:22 (Lytle); Vol. IV, Tr. 255:24-258:3 (DiFederico). However, a close look at Landowners’ applications and public representations prior to trial belie this claim. First, absent from the May 2016 special use request is any statement to the effect that Landowners had the legal right to bring 250 tourists per day to the property and were only seeking guidance about the “highest” use the County theoretically would have approved. Def. Ex. 38. Rather, the application states that Landowners wanted a special use permit, in part, so that the existing mine could be “used as a live museum to educate visitors on the history of the Groom Lake Valley area and the rich family history at the Groom mine site.” *Id.* at TDG WF 000853.

121. Further, in explaining their proposal to the Lincoln County Commissioners, Landowners represented that the purpose of submitting the applications was to “essentially allow a - - a recreational use with a tourist commercial component” Pl. Ex. 293 at 7:22-9:22. “Individuals would be invited under this special use permit and zone change to come onto the property and enjoy a tour of the oldest owned family [sic] mine in the entire state of Nevada” *Id.* Landowners made clear at that time that visitors on the tour “would have an opportunity to look across the valley, across Groom Lake Valley and see Area 51.” *Id.* at 10:1-4. These statements are at odds with Landowners’ newfound claim that a special use permit was only necessary if Landowners constructed new improvements. Vol. VIII, Tr. 22:5-23:1 (Leavitt closing).

122. Regardless, there is no evidence that a buyer would simply assume that large-scale tourism was legally permissible on the Date of Value. As Mr. Moeder explained, before

1 developers or investors will pay a significant sum for a tourist commercial property, they require
 2 written assurances that the property can be put to that intended use. Vol. VI, Tr. 66:8-18
 3 (Moeder). Here, Lincoln County never made such a guarantee. Therefore, a buyer looking to
 4 purchase the Groom Mine for large-scale tourism on the Date of Value would be left with
 5 allowable uses in the A-5 zoning district and would understand that, at a minimum, the buyer
 6 would need to apply for a special use permit. *See* Vol. V, Tr. 175:16-24 (DiFederico) (noting
 7 that special use permits are for uses “not specifically identified as an allowable use”).

8 123. A reasonable buyer also would be aware that if the buyer changed the existing use
 9 of the Groom Mine from rural recreation to commercial tourism, the Air Force, as the
 10 neighboring property owner, could file an objection with the planning commission to prevent
 11 that use—even if the zoning permitted a tourism use as of right. Vol. IV, Tr. 68:8-12 (Lytle).

12 124. For all of these reasons, no reasonably knowledgeable buyer would assume large-
 13 scale tourism was legally permissible at the Groom Mine on the Date of Value without
 14 permission from Lincoln County.

15 4. Landowners Failed To Establish That Lincoln County Would Have Issued
 16 The Special Use Permit Or Zone Change Necessary For Large-Scale
 17 Commercial Tourism And Commercial Retail

18 125. Although Lincoln County’s Master Plan has the goal of encouraging tourism, the
 19 Commission finds it would have considered and weighed the Air Force’s objections to
 20 permitting large scale commercial tourism use of the Property. Mr. Lytle testified that, in his
 21 opinion, “not a large population of people” would ever come to the Groom Mine as part of any
 22 tourism business. Vol. IV, Tr. 59:3-5. Lincoln County would not have put at risk Air Force jobs
 23 and the Air Force’s annual payment to the County if “not a large population of people” ever were
 24 expected to travel to the Groom Mine. *Id.*, Tr. 62:9-63:2, 66:6-12.

25 126. As Mr. Mathews explained, while zoning may be “somewhat flexible” in Lincoln
 26 County, “[it] really becomes an issue when there’s conflict between neighbors, and that’s when
 27 zoning really becomes an issue.” Vol. VII, Tr. 108:2-10 (Mathews). Mr. Neville further
 28 testified that although he concluded it was reasonably probable the Groom Mine could be

1 rezoned for commercial tourism on the Date of Value, that permission would be “subject to
 2 conditions, and there are a lot of unknown conditions due to the way the special use permit was
 3 processed. So that’s a very important part of that statement.” Vol. VII, Tr. 11:7-21 (Neville);
 4 Vol. VI, Tr. 212:16-20 (Neville) (“[A]ny buyer of that property who was going to use it for a
 5 tourist commercial [use] ... would want to know exactly what those conditions were going to be
 6 and just exactly how the Air Force would react to their proposal.”).

7 127. Indeed, Mr. Lytle testified that he “[c]ertainly” would consider any Air Force
 8 objections and that those objections could be addressed through conditions such as a limitation
 9 on the number of days or hours a tourism business could operate at the Groom Mine. Vol. IV,
 10 Tr. 61:20-62:8 (Lytle).

11 **Mr. DiFederico’s Sales Are not Comparable to the Groom Mine.**

12 The Commission has been instructed that “to be truly comparable, a sale should have the
 13 same or similar highest and best use as the Subject Property.” Commission Instruction No 14.

14 128. Landowners otherwise did not carry their burden of proving the fair market value
 15 of the Groom Mine, and their valuation must be rejected for this separate reason as well. As set
 16 forth below, Mr. DiFederico misapplied the sales comparison approach by selecting sales from a
 17 drastically different market, by adjusting those sales inconsistently, and by failing to support
 18 those adjustments with any market evidence. Mr. DiFederico’s opinion of value is therefore
 19 unreliable and cannot serve as a basis for awarding just compensation.

20 129. Rather than look for sales with the same highest and best use in a similar market
 21 area, Mr. DiFederico relied on sales in the Las Vegas metropolitan area. Vol. V, Tr. 68:7-20
 22 (DiFederico) (testifying that he considered approximately 75 sales, most of which were on the
 23 Las Vegas Strip); *see also* Pl. Ex. 482 (Weissenborn map showing location of DiFederico sales
 24 relative to the Groom Mine). Las Vegas and rural Lincoln County do not share comparable
 25 populations, Vol. VI, Tr. 108:1-6 (Weissenborn); similar supply and demand characteristics, Vol.
 26 IV, Tr. 214:22–215:7 (DiFederico) (“[Lincoln County is] just not an active place. It’s very slow,
 27 very quiet.”); comparable municipal infrastructure, Vol. V, 93:8-12 (DiFederico); or market
 28 competitiveness. Vol VI, Tr. 108:18-24 (Weissenborn). As Mr. DiFederico himself testified at

trial: “I don’t think anybody competes with Las Vegas, hotels, entertainment, shopping. There’s more in a five-mile stretch on the Strip than, I think, more top-notch restaurants than anywhere in the country in that five-mile stretch.” Vol. IV, Tr. 216:4-8 (DiFederico) (emphasis added). Accordingly, real estate prices are higher in Las Vegas than anywhere else in Nevada. Vol. VI, Tr. 111:22-25 (Weissenborn) (citing Mr. DiFederico’s appraisal report); *see also* Vol. V, Tr. 171:14-16 (DiFederico) (“\$50 million is a big number. . . but in Las Vegas, we have large sales, large sale prices, for properties.”). None of Mr. DiFederico’s comparable sales are in the same or similar market as the Groom Mine in rural Lincoln County. *See* Vol. VI, Tr. 107:24-108:24 (Weissenborn).

130. Mr. DiFederico was unable to explain how any of the sales he used in his comparable sales analysis were a substitute for the Groom Mine other than being tourist commercial properties. Mr. DiFederico admitted that none of his sales “were truly the best comparable.” Vol. V, Tr. 69:7 (DiFederico).

131. Despite Landowners’ claims that the Groom Mine is a unique, one-of-a kind property, Mr. DiFederico used Las Vegas sales that are not themselves unique or one-of-a-kind. *See* Vol. V, Tr. 185:19-22 (DiFederico) (“And that one, to me, is funny because [Sale 1] has been vacant for 15 years. So if it’s such a unique development opportunity, why – nobody has put a stick out there.”); *Id.*, Tr. 90:12-14 (“I mean, I’ve done a lot of work over there [where Sale 2 is located].”); *Id.*, Tr. 97:6-14 (“I mean, I’ve used [Sale 3] multiple times. . . .”); *Id.*, Tr. 98:5-12 (“[Sale 3 is] not unique”); *Id.*, Tr. 105:12-25 (testifying that he appraised the property across the street from Sale 4); *Id.*, Tr. 111:19-22 (testifying that Sale 5 “was from [his] database”).

132. Nor do any of Mr. DiFederico’s sales have value based on a view. *Id.*, Tr. 202:11-13 (“Q. And none of your comparable properties was purchased with the intent of selling the view from those properties; right? A. Thinking of my properties, no.”); *see also* Vol. VI, Tr. 93:10-16 (Moeder) (“You’re talking about paying \$400 to see something versus comps that are hotels or other land uses or racetracks. That is a completely different market.... It’s not comparable.”).

133. Individually, and collectively, Mr. DiFederico's Las Vegas sales fail to inform the fair market value of the Groom Mine.

DiFederico Sale 1

134. Mr. DiFederico's Sale 1 on Tropicana Avenue is not probative of the fair market value of the Groom Mine because the properties are not remotely comparable. Vol. VI, Tr. 111:4-13 (Weissenborn). Mr. DiFederico's Sale 1 is located just east of the Las Vegas Strip and adjacent to McCarran Airport. Vol. V, Tr. 73:23-74:3 (DiFederico); Pl. Ex. 474 (aerial view). It is behind the MGM Grand Hotel, the largest hotel in the United States, in the resort corridor of the Las Vegas Strip. Vol. V, Tr. 187:2-5 (DiFederico); Pl. Ex. 470 (marketing material). The MGM has enough rooms to accommodate every single resident of Lincoln County. Vol. V, Tr. 187:6-10 (DiFederico). Mr. DiFederico's Sale 1 was even considered as a possible site for the new NFL stadium. Vol. V, Tr. 188:11-13 (DiFederico). The University of Nevada Las Vegas ultimately purchased Mr. DiFederico's Sale 1 for \$50 million, Vol. V, Tr. 74:8-9 (DiFederico), the same value that Mr. DiFederico ascribes to the Groom Mine.

135. Commercial properties with the greatest exposure tend to sell for higher unit prices. Vol. V, Tr. 210:21-211:2 (DiFederico); *see also* Vol. VI, Tr. 110:17-111:3 (Weissenborn) (“Well, for a commercial property, traffic count is desirable. It provides a marketing window for a business. And if you have 100,000 people per day traveling past a commercial property, that’s that much less marketing money you have to spend on a property.”). Mr. DiFederico’s Sale 1 fronts Tropicana Avenue, one of Las Vegas’s “major thoroughfares” with close to 100,000 vehicles per day. Vol. V, Tr. 85:12-17, 186:22-23 (DiFederico). By comparison, no vehicles drive within miles of the Groom Mine. *See* Vol. VI, Tr. 171:12-24 (Neville) (Groom Mine is 11 miles beyond the NTTR security checkpoint).

136. No buyer would view Mr. DiFederico's Sale 1 as comparable to the Groom Mine because of these locational differences. Vol. VI, Tr. 111:4-13 (Weissenborn) ("Q. Would a potential buyer view sale 1 as comparable to the Groom Mine? A. Sale 1 is located on Tropicana Boulevard. It is an eight-lane highway a half a mile from the Las Vegas Strip just north of McCarran Airport. . . . And Mr. DiFederico is comparing that property to an inholding . . . within

1 the Air Force field 29 miles from a major highway. They are not remotely comparable in
 2 location.”) (emphasis added). Nor would a buyer with \$50 million to spend view the Groom
 3 Mine as a substitute for Mr. DiFederico’s Sale 1. Vol. VI, Tr. 112:1-5 (Weissenborn). Even Mr.
 4 DiFederico himself testified that his Sale 1 is “substantially better” than the Groom Mine. Vol.
 5 V, Tr. 85:2-11 (DiFederico); *Id.*, Tr. 81:25-82:4 (“Well, first, I think it was obvious it was a
 6 better location.”).

7 **DiFederico Sale 2**

8 137. Mr. DiFederico’s Sale 2 is also not comparable to the Groom Mine. Vol. VI, Tr.
 9 113:23-114:1 (Weissenborn). Like his Sale 1, Mr. DiFederico’s Sale 2 has a superior location in
 10 the Las Vegas metropolitan area. *Id.* His Sale 2 has frontage on Boulder Highway with access
 11 to I-515 within a half mile. Vol. V, Tr. 189:20-190:1 (DiFederico). The property is within a
 12 gaming overlay that has hotel casinos. *Id.*, Tr. 90:25-91:9.

13 138. Sale 2 was developed into a school and apartments. Vol. V, Tr. 87:1-9
 14 (DiFederico); Pl. Ex. 464 (photos). Prior to the sale, the buyer of Sale 2 intended construction of
 15 600 apartment units. Vol. V, Tr. 189:10-12 (DiFederico). It thus does not share the same
 16 highest and best use as Mr. DiFederico’s proposed highest and best use of the Groom Mine, and
 17 he admitted as much at trial. *Id.*, Tr. 95:14-25 (“Because if - - if this was a hot area, then this
 18 location had a gaming overlay So it had that potential, but because of that location on
 19 Boulder Highway, it doesn’t have that demand. . . .”). A potential buyer would not develop a
 20 600-unit apartment complex on the Groom Mine. Vol VI, Tr. 113:8-14 (Weissenborn). No
 21 buyer would view the Groom Mine as a substitute for Mr. DiFederico’s Sale 2. *Id.*, Tr. 114:6-8.

22 139. Mr. DiFederico testified that smaller properties tend to sell for higher per acre
 23 values. Vol. V, Tr. 92:13-18. His Sale 2 is a quarter the size of the Groom Mine, *Id.*, and it sold
 24 for \$4,195,000. *Id.*, Tr. 88:12-14. On its face, Mr. DiFederico’s Sale 2 does not support a \$50
 25 million valuation of the Groom Mine. In response to this critique, Mr. DiFederico testified that
 26 that was “ridiculous” because “[y]ou’re comparing apples and oranges. . . . They’re not the same
 27 size. There’s [sic] so many differences. . . .” Vol. V, Tr. 89:9-22. Mr. DiFederico is right—
 28 there are so many differences between his Sale 2 and the Groom Mine that the price paid for

1 Sale 2 is not indicative of the fair market value of the Groom Mine.

2 **DiFederico Sale 3**

3 140. As with his other sales, Mr. DiFederico's Sale 3 is not comparable to the Groom
 4 Mine because of its location in the Las Vegas Metro, a 15-minute drive to the Strip. *See* Vol. VI,
 5 Tr. 114:21-115:1 (Weissenborn); Vol. V, Tr. 192:16-19 (DiFederico). Mr. DiFederico's Sale 3
 6 has excellent visibility from I-15, the "lifeblood" of Las Vegas. Vol. V, Tr. 192:2-11
 7 (DiFederico). I-15 is the "primary artery connecting Los Angeles and Las Vegas," and this
 8 traffic passes by Mr. DiFederico's Sale 3. Vol. VI, Tr. 114:21-24 (Weissenborn); Vol. V, Tr.
 9 192:2-11 (DiFederico). A buyer would not view the Groom Mine as a substitute for Mr.
 10 DiFederico's Sale 3 because of "the location that is influenced by Las Vegas, the municipal
 11 utilities that are available, the freeway interchange, and the visibility to about 50,000 vehicles per
 12 day." Vol. VI, Tr. 115:15-22 (Weissenborn). DiFederico's Sale 3 was developed into Speed
 13 Vegas, where visitors can pay several hundred dollars to drive a Lamborghini or Ferrari around a
 14 racetrack. Vol. V, Tr. 191:11-15 (DiFederico). The property was zoned H-2 at its sale date; the
 15 H-2 zoning permits a variety of residential, office, and commercial uses. *Id.*, Tr. 193:1-5.

16 141. Mr. DiFederico's Sale 3 is not comparable to the Groom Mine and cannot be used
 17 to support Mr. DiFederico's \$50 million valuation.

18 **DiFederico Sale 4**

19 142. Similarly, Mr. DiFederico's Sale 4 is not comparable to the Groom Mine because
 20 of location. Vol. VI, Tr. 116:23-117:4 (Weissenborn) ("Again, Sale 4 is located in metropolitan
 21 Las Vegas with all municipal infrastructure and it's ready for development."). His Sale 4 is
 22 located in the rapidly growing Galleria area, just west of Boulder Highway and less than a half
 23 mile to the on/off ramps to US 95/I-515. Vol. V, Tr. 101:18-22, 193:24-194:4 (DiFederico);
 24 Vol. VI, Tr. 116:13-22 (Weissenborn). Near the Galleria at Sunset Mall, the area around Mr.
 25 DiFederico's Sale 4 has numerous retail stores and restaurants, with probably "the most retail in
 26 the whole city of Las Vegas." Vol. V, Tr. 194:8-11 (DiFederico). There is also a hospital
 27 nearby and a subdivision development to the south. Vol. VI, Tr. 116:16-20 (Weissenborn). Mr.
 28 DiFederico's Sale 4 was developed into Cowabunga Water Park. Vol. V, Tr. 102:1-5

(DiFederico); Pl. Ex. 466 (photos).

143. At 22.68 acres, his Sale 4 is roughly a quarter the size of the Groom Mine patented acres, Vol. V, Tr. 193:9-17 (DiFederico), and it sold for approximately \$4.6 million. *Id.*, Tr. 193:18-19. Mr. DiFederico's Sale 4 does not support his opinion of value of the Groom Mine.

DiFederico Sale 5

144. Finally, Mr. DiFederico's Sale 5 is not comparable to the Groom Mine, and no buyer would view it as a substitute. Vol. VI, Tr. 118:17-119:3 (Weissenborn) ("Again, its location. It is just west of the Petro Truck Stop. There's some other retail users there. There's a large restaurant. And what doesn't really show in this photograph, but the area has since been developed with a number of large distribution facilities, large industrial buildings, in addition to the [Las Vegas Speedway]."); Pl. Ex. 467 (photos). It is located near the Las Vegas Motor Speedway, which hosts NASCAR races and seats more than 100,000 people. Vol. V, Tr. 109:24-110:9 (DiFederico). It sold for approximately \$7.5 million in July 2007, at the "top of the market." Vol. V, Tr. 110:14-18, 111:10-11 (DiFederico). The buyer owned adjacent land and intended to construct a casino on the site. *Id.*, Tr. 197:1-3.

145. Because of the significant market differences between rural Lincoln County and metropolitan Las Vegas, not one of Mr. DiFederico's sales would be viewed as a substitute for the Groom Mine by a potential buyer. Vol. VI, Tr. 119:17-20 (Weissenborn). Since none of Mr. DiFederico's sales are comparable, no number or magnitude of adjustments will provide a reliable indication of the market value of the Groom Mine. Vol. VI, Tr. 111:14-21 (Weissenborn) ("I don't think whatever adjustment you apply to [Sale 1], it doesn't result in a reliable indication of value."); *see also* Vol. VI, Tr. 114:2-5, 116:23-117:4 (Weissenborn).

146. Landowners' failure to establish that large-scale tourism was the highest and best use of the Groom Mine, as well as Mr. DiFederico's failure to support his valuation with comparable sales and supported adjustments, mean that the Groom Mine must be valued based on its actual, existing use at the Date of Value: as a rural recreational retreat. *See* Commission Instruction No. 13 ("The highest and best use is not necessarily what the owner was using the

property for at the time of the taking. However, in absence of proof to the contrary, the current use is presumed to be the best use.”). The United States’ expert appraiser, Warren Neville, so valued the Groom Mine.

B. Mr. Neville Concluded That The Groom Mine Had A Value Of \$254,000 At The Date Of Taking As A Rural Recreational Retreat

147. Mr. Neville identified five comparable rural recreation properties in Lincoln and White Pine counties. These sales all were arms-length transactions. *Id.*, Tr. 216:17-21, 218:18-19. They ranged from 25 to 195 acres in size, comparable to the Groom Mine’s 87.49 patented acres. Pl. Exs. 325, 326 (summarizing sales).

148. Market participants buy and sell rural recreational properties on a price per acre basis. Vol. VI, Tr. 216:4-13 (Neville). Mr. Neville’s five comparable sales ranged from \$1,668 to \$10,000/acre, as shown in Plaintiff Exhibit 324, imaged below:

Sale No.	Price / Acre	Overall Comparison
S-1	\$10,000	Very superior
S-4	3,237	Superior
S-2	2,953	Superior
Subject	-	-
S-3	2,303	Inferior
S-5	1,668	Inferior

149. Mr. Neville concluded that the Groom Mine should sell for less than the Sale 1 (S-1), Sale 2 (S-2), and Sale 4 (S-4) properties. He concluded these properties had superior attributes to the Groom Mine when they sold including: superior improvements (Sales 1 and 4)¹⁶; pinyon pines and junipers (Sales 1 and 4); less acreage (Sales 1 and 2)¹⁷; better location (Sale 2);

¹⁶ Sale 1 had a “very good quality” modular home, solar electric system, 3-car garage, and fencing. Vol. VI, Tr. 220:20-221:3 and 221:16-21 (Neville). Sale 4 had a remodeled home and superior solar electric system. *Id.*, Tr. 229:7-230:24.

¹⁷ The appraisers on both sides agree that smaller-acreage properties will fetch a higher unit price than comparable larger properties. Vol. VI, Tr. 222:7-9 (Neville) (“So, typically, smaller properties tend to sell for a higher unit value. So I considered that to be a superior feature.”); Vol. V, Tr. 82:5-12 (DiFederico) (explaining why smaller properties sell at a higher unit value) (“So our parcel is twice as large as this. This one is smaller. It has more buyers that can afford it, more competition, pushes the price up. So that one you adjust down for size because it’s smaller.”).

proximity to public recreation and hunting land (Sales 1 and 4); and superior water rights (Sale 4). Vol. VI, Tr. 219:5-222:15 (Sale 1), 222:16-224:21 (Sale 2), 227:17-230:24 (Sale 4). Mr. Neville separately determined that the Groom Mine should sell for more than the Sale 3 (S-3) and Sale 5 (S-5) properties. *Id.*, Tr. 235:14-20.

150. Mr. Neville opined that the Groom Mine would sell for between \$2,303/acre and \$2,953/acre. *Id.*, Tr. 235:5-20. His final value conclusion was \$2,900/acre. *Id.*, Tr. 235:21-23.

151. Mr. Neville applied his \$2,900 price/acre to the patented 87.49 acres only. He did not multiply this price by the acreage of the Groom Mine's unpatented claims because the unpatented claims could be used for mining-related purposes only; they therefore did not contribute to the overall value of the property as a recreational retreat.¹⁸ Vol. VI, Tr. 166:23-167:13 (Neville).¹⁹

152. This resulted in a total market value of the Groom Mine, excluding the mineral interest, of \$254,000 at the Date of Value (\$2,900/acre multiplied by 87.49 patented acres).

C. Landowners Did Not Present Other Rural Recreation Sales Or Challenge Mr. Neville's Sales-Comparison Analysis

153. Landowners disputed Mr. Neville's highest and best use conclusion but otherwise did not seriously challenge his valuation.²⁰ For example, Landowners did not present any alternative sales of properties having a highest and best use of rural recreation.

154. Landowners retained Keith Harper to review Mr. Neville's appraisal. Mr. Harper testified that Mr. Neville was qualified to review desert land like the Groom Mine and that Mr.

¹⁸ Mr. Neville did not testify to the value of the mineral estate because the value of the mineral estate is outside the scope of this proceeding. Commission Instruction No. 20.

¹⁹ Mr. DiFederico similarly multiplied his per-acre price by the patented 87.49 acres only. Vol. V, Tr. 122:24-123:3 (DiFederico). Mr. DiFederico also testified that he searched for properties similar in size to the patented claims (87.49 acres), not properties similar in size to the Groom Mine's total acreage including the unpatented claims (371.79 acres). *Id.*, Tr. 182:6-18 (explaining search for properties between 10-150 acres).

²⁰ On cross-examination, counsel suggested that two of Mr. Neville's comparable properties may have sold under duress. Vol. VII, Tr. 49:5-51:6. Mr. Neville explained that he personally verified the circumstances of each sale and confirmed that the sales were market, arm's length transactions. *Id.*, Tr. 60:21-61:16.

1 Neville's appraisal satisfied professional standards (except with respect to the determination of
 2 highest and best use). Vol. VII, Tr. 146:5-8; 142:4-10 (Harper) ("Q. [Commissioner Pro]: Just
 3 assuming – assuming he was correct, that it was ... rural recreational residential, was the
 4 approach to the comparable analysis taken by Mr. Neville within the normal standards of
 5 certified appraisers? A. Yes. I believe that his analysis meets the standards of USPAP and the
 6 Yellow Book outside of the highest and best use.").

7 155. Mr. Harper offered no criticism of Mr. Neville's selection of rural-recreation sales
 8 or of Mr. Neville's sales-comparison analysis generally. In response to questioning from
 9 Commissioner Pro, Mr. Harper testified only that he did not agree with "some" of Mr. Neville's
 10 rankings of his sales. *Id.*, Tr. 142:22-143:9.

11 156. But Mr. Harper did not state which sales he would have ranked differently or how
 12 a different ranking would have impacted value. Mr. Harper also admitted that he did not visit all
 13 of Mr. Neville's comparable sales. *Id.*, Tr. 148:8-12.

14 157. The Commission has been instructed that "in situations where there are few
 15 instances of comparable sales in recent time, the expert is only expected to make a reasonable
 16 estimate of the market value of the subject property after examining all relevant facts.
 17 Commission Instruction No 14.

18 **D. Just Compensation**

19 158. The Commission finds Mr. Neville correctly concluded that the Property's highest
 20 and best use on the date of value was rural recreational. The Commission also finds that Mr.
 21 Neville's appraisal complied with applicable industry standards, and that he is qualified to render
 22 an expert opinion on the fair market value of the Property. However, the Commission finds that
 23 Mr. Neville failed to give sufficient consideration to the unique one-of-a-kind nature of the
 24 Groom Mine.

25 159. The Commission concludes just compensation for the taking is \$12,500 per acre
 26 or \$1,100,000 ($87.49 \times \$12,500 = \$1,093,625$, rounded to \$1,100,000) for the following reasons:

27 In enacting Public Law 98-485 ("1984 Withdrawal") Congress authorized the withdrawal
 28 of 89,600 acres of federal land in Lincoln County, Nevada from public use for military purposes.

1 Stipulated Fact No 8. The withdrawal was explicitly made “[s]ubject to valid existing rights,”
2 including the patented and unpatented claims comprising Groom Mine. *Id.* The legislative
3 history confirms the Groom Mine was not within the scope of the 1984 Withdrawal. *Id.*

4 160. Prior to the 1984 Withdrawal, the Federal land surrounding the Property was open
5 to the public. Stipulated Fact No 9. After the 1984 Withdrawal, the Property was a private
6 inholding until the taking in 2015. *Id.*

7 161. After the taking, the government restricted public access, but the Landowners had
8 access rights which the Air Force agreed allowed Landowners, their employees and business
9 visitors to access the Groom Mine. Stipulated Fact No. 12. In 1984, the Air Force gave written
10 assurances to Landowners and Congressman Harry Reid and Congresswoman Barbara
11 Vucanovich that “[t]he Sheahan’s will continue to have access to Groom Mine. Their legal
12 rights to own, operate and sell the mine are not affected by the proposed land withdrawal” and
13 that the Air Force “would have no authority to deny access to any employees or business visitors
14 of the Sheahans.” The Air Force also provided written assurances that it “would have no
15 authority to deny access to any employees or business visitors of the Sheahans”, and “could only
16 terminate the Sheahans’ rights to Groom Mine by initiating condemnation proceedings or
17 purchasing the property. At this time the Air Force has no intention of taking such action.”

18 162. For valuation purposes in this case the parties stipulated that a buyer of the
19 property could be granted permission to enter NTTR to access the Property for themselves, their
20 employees and business visitors, and that the Air Force would not prohibit constrain or interfere
21 with access to the Property beyond those basic restrictions applicable to anyone seeking entry to
22 NTTR. Stipulated Fact No. 12.

23 163. Terry Ochal was the NTTR Liaison Officer responsible for facilitating the
24 Landowners access to Groom Mine, and was disclosed as the individual with knowledge of
25 Landowners and their guests access. Col. Zuhlke testified at trial that Mr. Ochal was the
26 individual who would have the most knowledge about access to Groom Mine on the date of
27 value. Mr. Ochal testified he had worked with the Sheahans from 2007 to 2015; his job was to
28 facilitate smooth access; the Sheahans had the right of access to their property for themselves,

1 their employees and business visitors; as a courtesy the Landowners provided the Air Force with
 2 a list of visiting individuals and advanced notice of visits, but the Air Force was not permitted to
 3 deny access to the Landowners, their family, their employees or business visitors. Mr. Ochal
 4 testified this courtesy was voluntary.

5 164. As a result of the 1984 Withdrawal, which restricted public access but was subject
 6 to all Landowners existing legal rights to the Property, including access to the Groom Mine,
 7 Landowners owned the only privately held property with a clear and unobstructed view of Area
 8 51.

9 165. The Landowners legal rights to their fee simple interest in the 87.49 acres
 10 comprising the patented claims were fully intact on the date of taking.

11 166. The Property is unique and one-of-a-kind because of its view of Area 51 and its
 12 historic use as a family owned mining operation. The Commission finds the uniqueness of the
 13 Property establishes it would command a premium in the real estate market above Mr. Neville'
 14 Sale No. 1 of \$10,000 per acre. Just compensation for the taking is \$1,100,000 (87.49 x \$12,500
 15 = \$1,093,625, rounded to \$1,100,000).

16 **IV. CONCLUSION**

17 For the reasons explained in this report, it is the Commission's deliberate judgment that
 18 just compensation for the taking is \$1,100,000.

19 Dated this 29th day of May, 2020

20 LAND COMMISSION

21 /s/ _____
 22 Hon. Michael L. Douglas (Ret.), Commissioner

23 /s/ _____
 24 Hon. Peggy A. Leen (Ret.), Chair

25 /s/ _____
 26 Hon. Philip M. Pro, Commissioner
 27
 28